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TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

Appellants

-versus-

UNITED STATES OF AMERICA,

Appellee

Appealed from the United States District Court for the Southern District of Texas

U. S. COURT OF APPEALS
FILED
JUN 2 1958

ALPHA LAW BRIEF CO., 402 M & M BUILDING, HOUSTON

(Original Record Received _____ 19____.)

EDWARD W. WADSWORTH

CLERK

A. Yes, sir.

Q. What was that?

A. He stated his salary as attorney for the board was $200 for the first month and $250 for each month thereafter. We asked him how much he realized on his contract for the collection of delinquent taxes, and he stated $300.

Q. $300 for what period?

A. For the entire period of the contract, the month that it was effective, January 2 of 1953, and this conversation was on April 15, and it was up to that time of 1954.

Q. All right, sir. Did you ever have an interview with Mr. Jesus Oliveira?

A. Yes, sir.

Q. When and where was that?

A. In his hardware and implement store in Benavides on April 29, 1954.

Q. What is the name of that store?

A. I believe it is the Oliveira Implemnet Company.

Q. Is that where you had this conversation with him?

A. It was.

Q. Was there any discussion there with Mr. Oliveira as to Mr. Oliveira's relations to other people there in the community?

A. Yes.

Q. What, if anything, did he tell you?

A. I don't know just exactly, sir, what conversation you have in mind, what he was—his blood relation to any member of the school board?

Q. Yes.

A. Yes, I believe that he was—had some distant relatives, two of them.

Mr. Foreman: We are asking that any conversation with Mr. Oliveira be limited to Mr. Oliveira.

The Court: The jury is so instructed.

Q. (By Mr. Wilkey) Go ahead and tell us what this part of the conversation was, Mr. Main.

A. We asked him how many people he was related to, I believe, working for the Benavides Independent School District at the time.

Q. What did he tell you?

A. I think he told us there were two.

Q. Who were they?

A. They were both named Oliveira, one a cousin and another a second cousin.

Q. Who were they?

A. I think Velia was a second cousin and the other one with the board was a first cousin.

Q. What was the other one?

A. Well—

Q. Velia Oliveira, and who was the other one?

A. I don't recall his first name.

Q. Was there any further discussion in regard to the affairs of the Benavides Independent School District?

A. Yes.

Q. And what was that?

A. We informed Mr. Oliveira that an examination of the annual reports showed the payment to him of a number of checks over a period of 1950, 1951, 1952, and 1953, and asked him whether or not he had received the checks and he said he had.

Q. All right, sir.

A. And then I asked him for what purpose.

Q. What did he say?

A. Well, he said he had been nightwatchman.

Q. Where?

A. At Benavides. At the Benavides Independent School District. He said his home is adjoining the school grounds, overlooking it, and the acted as nightwatchman.

Q. All right, sir. Did you discuss with him over what period of time he had received those checks, alleged checks, for his services at nightwatchman?

A. Only in a general way. I told him the checks ran through the entire period.

Q. Did he—have you prepared from the annual reports a summary of those checks allegedly received by Jesus Oliveira which you discussed with him that day?

A. I have.

Q. Do you have that summary here?

A. Yes, sir.

Mr. Wilkey: May we have this marked as an exhibit, please?

(Document tendered to the Clerk and marked as Government's Exhibit 222.)

The Court: And I am going to declare a recess at this time until 1:45. The court is recessed until 1:45.

8-1697 AFTERNOON SESSION—
JUNE 3, 1957

W. D. MAIN,

being the witness who was on the stand at the time Court recessed for lunch on June 3, 1957 resumed the stand at this time, and continued his testimony as follows:

8-1697 DIRECT EXAMINATION
(CONTINUED)

Q. (By Mr. Wilkey) Inspector Main, I believe when the Court recessed that you had produced this instrument which has now been identified as Government's Exhibit 222, and I ask you to state for the record if it has been identified what this is and from what source it was obtained?

A. This is a list by fiscal years compiled from the annual reports of the Benavides Independent School District which shows the page number, the date of the voucher, the number of the voucher, for what period or, in other words, the purpose of the voucher, the date paid and the amount thereof. Checks issued in the name of Jesus Oliveira drawn on the local maintenance fund of the Benavides Independent School District and checks issued to the Oliveira Implement Company.

Mr. Wilkey: All right, sir.

Your Honor, we offer in evidence Government's Exhibit 222.

Mr. Foreman: May it please the Court, we are objecting to that being reiterated by documentary, what the prose-

cuting attorney calls, summaries offered here as exhibits, a multiplication of what is already in the record from the witness' testimony as part of Government's Exhibits 1, 2, 3 and 4, the first exhibits entered. Those legal-size five typewritten pages, some of them containing only one line of information, other than an explanation of what it is, are already in the record and before the jury, and this could serve no purpose except to confuse the jury into believing there was something other than, and additional, or else for argumentative purposes. This witness could testify to what he found and he could do it without the offer of these exhibits. I call the Court's attention that the exhibits, as such, are often permitted and taken into the jury room. That amounts to overemphasizing, reiterating, repeating for no useful purpose whatever, the prosecution's theory in this case and without any showing that a single one of these items, without the Government even challenging any item except the salary of Mr. Oliveira, all of the others for equipment purchased at his store for the Benavides Independent School District, and no attempt shown or no allegation in the indictment that the goods, wares and merchandise represented by each of these checks was not received in good faith by the Benavides Independent School District. It is calculated to mislead, prejudice, and inflame, and any good that it might accomplish is overbalanced by our objections.

It is prepared out of the presence and hearing of the defendants. It has already been, I understand, limited to Mr. Oliveira, and I think the Court made that instruction, but even as to him, and certainly as to all the other defendants, we object for the reason that it is repetitious of that which is already in the record, and—we could go

on ad infinitum with these and put wheelbarrow loads of testimony of what is already in and hauling it back in here and to the average lay juror, seeing it as such, he assumes it is something new.

The Court: May I see the exhibit, please?

(Tendered to the Court.)

What says the Government?

Mr. Wilkey: Your Honor, this has been prepared on the same footing as Government's Exhibits 9 and 10, which already have been admitted as summaries of certain portions of the annual reports. It saves the effort of going through page by page and saying "On this page there is one line and on this page another," and it puts it all on one.

In addition to the same grounds we urge for Exhibits 9 and 10, we have this further reason for offering this: The witness, Inspector Main, has already testified in his conversation with Jesus Oliveira, he mentioned that Oliveira's name was shown as having received these checks on the annual report, and Oliveira said he did receive the checks as shown on the annual report. In the conversation it was not specified what checks, what dates were being talked about, but this compilation throws light on and makes clear what checks the defendant Oliveira and the witness were talking about.

The Court: Has the witness testified the Defendant Oliveira said those were the checks he was talking about?

Mr. Wilkey: The reference was in general to checks

on the annual reports for the years ending 1950, 1951, 1952 and 1953. Those are the annual reports Mr. Main has gone through and collected from the data shown line-for-line on Government's Exhibit 222.

Mr. Foreman: May I ask one more question from the prosecution; that is, are these items from 222 shown on Exhibits 9 and 10?

Mr. Wilkey: There is only one portion, and that is on Exhibit 10, the checks payable to Jesus Oliveira for the year ending 1950 only are shown on Exhibit 10, but Exhibit 10 does not purport to show these checks payable to Jesus Oliveira in the years 1951, 1952, and 1953, which this does.

The Court: Let me ask this question: You have something to say at this time, Mr. Foreman?

Mr. Foreman: No, Your Honor. Before the Court ruled, after getting that information, I wanted to make an additional, but I have no—I wanted to get that for the additional purpose that it was already in here not only one time, two times, already in here in another summary in Government's Exhibit 9 to the extent that it is in there as he has stated, that on 10 some of these items he has repeated on Government's Exhibit 222. He has already put in another summary on Government's Exhibit 10.

The Court: You mean Government's Exhibit 222?

Mr. Foreman: Yes, Your Honor, sorry. Government's Exhibit 222.

The Court: I notice most of these checks are indicated

for salary. Are the other checks, checks shown to be for merchandise, or are there two lists of checks payable to Mr. Oliveira?

Mr. Wilkey: Yes, Your Honor.

The Court: Is that the purpose of it?

Mr. Wilkey: Yes, and the purpose is to show those that were received by Mr. Oliveira, and it has already been testified Mr. Oliveira stated he owned the Oliveira Implement & Hardware Company. In fact, the interview was conducted in the office of the Oliveira Implement & Hardware Company.

The Court: The objection is overruled, and the jury is instructed that Government's Exhibit 222 is admitted in evidence, and that it is admitted in evidence as a summary and as a summary only.

Mr. Wilkey: Thank you, Your Honor.

Inspector Main, when was the first date you went down to Duval County on this investigation?

A. January 6, 1954.

Q. With reference to the Defendant O. P. Carrillo, in your conversation with him was anything discussed with regard to his education and when he got out of law school, et cetera?

A. Yes.

Q. What was said in that regard?

A. We asked Mr. O. P. Carrillo something about his personal history, and he said that he was born in Benavides, I believe he said, June 29, 1924, that he had

graduated from St. Mary's School of Law in San Antone in June of 1952, that he had come to San Diego and opened up a law office there in the San Diego State Bank Building with another young man, who had been in the same class with him, and who at the time was no longer associated with him, that he received, I believe, his first fee as an attorney on August 8 of 1952.

Q. What inquiry, if any, and how did you make the inquiry about his connection with the Benavides Independent School District?

A. Well, he said that he was an attorney, had been appointed attorney for the Benavides Independent School District in February of 1953 and had resigned in February of 1954.

Q. In this conversation with O. P. Carrillo, what period of time were you covering in this inquiry, in your conversation?

Mr. Foreman: Your Honor, the words said would be the best evidence of what period he is covering. We object to it as leading and suggestive, and calling for his intent rather than for the jury to interpret.

The Court: Objection sustained.

Q. (By Mr. Wilkey) What period of time did you ask him about?

A. I asked him about the entire time he represented the Benavides Independent School District.

Q. What answer did he give to that?

A. He stated when he represented them.

Q. When was that?

A. He was attorney for them between February, 1953 and February, 1954.

Q. That is attorney for them. Did he have any other employment or compensation?

A. Yes, he had a contract with the School District to collect the delinquent taxes which was executed January 2, 1953, and the conversation was had in his office on April 15, 1954.

Q. All right. Now, then, what period did he state—did he state what period of time his labors for the school district on collection of delinquent taxes covered?

A. He stated during the life of the contract, which was from the date it was signed to the time we were then talking about it.

Q. All right, sir. In addition to these two methods of employment by the School District, did Mr. Carrillo tell you about any other general employment he had?

A. Yes, he was assistant state district attorney for the 79th District from, I believe, February of 1953 to February of 1954.

Q. You say he was assistant. Did he tell you who the district attorney was at that time?

A. Yes, Rayburn Norris.

Mr. Wilkey: No further questions.

8-1705 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Main, when did you first talk with any assistant to the United States District Attorney for the Southern District of Texas about this investigation in Duval County?

A. I believe it was in January of 1954.

Q. Who was that? Did you talk with Mr. Wilkey himself at that time?

A. I don't recall whether I talked with Mr. Wilkey or not.

Q. If not he, whom do you recall having talked with at that time in January of 1954, Jim Dowd?

A. It could have been Mr. Dowd.

Q. Mr. Dowd was in charge of this case before Mr. Bottler was assigned it, was he not?

A. I believe so.

Q. Did Mr. Dowd make a trip with you down to Duval County?

A. No, he did not.

Q. Without going with you, do you know whether or not he went sometime in 1954?

A. No, I don't.

Q. Did you ever see him there?

A. I don't recall ever seeing him there.

Q. When you talked with the prosecuting attorney, was it before you went down there or after you had been?

A. Before.

Q. And after you had been there, when did you make your first report to a United States Attorney on this case?

A. Sometime prior to May 26, 1954.

Q. And was that a preliminary report, or does it have a name?

A. We refer to them as preliminary reports.

Q. And from May of 1954—from January until May of 1954, what proportion of your time was spent in Duval County and the adjacent areas?

A. I would say 90 per cent of it.

Q. Also Mr. Gauley?

A. Yes.

Q. In addition to he, did you see Mr. Dimler and Mr. Gromatzky there?

A. I did.

Q. Did you see Mr. Niendorf and his associates?

A. Yes, sir.

Q. What were their names?

A. Mr. Niendorf, Mr. Dimler, Mr. Gromatzky, and one or two others. I don't recall their names.

Q. Mr. Niendorf's partner is the one I want.

A. Edward Henley. Is that the one you are thinking of?

Q. Yes. They are Federal Bureau of Investigation—what are they?

A. They are Internal Revenue employees, I believe, members of the Intelligence Unit.

Q. I am having difficulty catching you.

A. I believe, Mr. Foreman, they are members of what you refer to as the Intelligence Unit of the Internal Revenue Bureau.

Q. That was Niendorf, Dimler, and who else?

A. Henley.

Q. Wasn't there another one, Gromatzky?

A. I believe at one time there was some 13 people down there.

Q. From Internal Revenue?

A. Well, I don't know.

Q. Thirteen agents, representatives of the United States Government?

A. Well, I wouldn't say that. I don't know who they were, all of them.

Q. So many you couldn't even designate the source or alleged section of what government they represented?

A. Now, I wouldn't go that far. I would say we were down there making our own investigation, and we would occasionally cross paths of somebody else's investigators.

Q. I am trying to get at whether the 13 you had reference to included several Texas Rangers and any number of Assistant District Attorney Generals, or if they were only agents or representative of the Federal Government?

A. There were some Texas Rangers who were doing some work about which I was not advised, but how many of them and how often, I don't know, Mr. Foreman. There were also some Internal Revenue people down there and there were some people from the Attorney General's office, and the personnel would change from time to time.

Q. I understand, but my question had to do with the —what government, whether federal or state, or subdivisions of the State Government, the 13 about which you had in mind when you mentioned it one time that there were 13. Were the 13 that you know about representatives of the Federal Government?

A. I believe they were.

Q. All right. Now, without attempting to recall their identities, would you tell us approximately how many assistant Attorney's General of the State of Texas were down there?

A. Well, on different occasions I know of three or four.

Q. All right. That was Mr. Gresham?

A. Sam Ratliff.

Q. And Mr. Sidney Chandler?

A. Not at the time I have in mind, Mr. Foreman.

Q. Was Eugene Brady?

A. I understand he was there, but I didn't meet him.

Q. And was there a—

Mr. Wilkey: Your Honor, we don't object to these

question, but we object to hearsay. If the question calls for hearsay, we object to it.

Mr. Foreman: I don't want anything except what you know and from whatever source you know of your own knowledge, Mr. Main.

Do you know a Frank Penata?

A. Yes.

Q. He is Assistant Attorney General?

A. I know he was Assistant Attorney General. I met him down there, that is true.

Q. Did you see General John Ben Sheppard himself down there?

A. Yes.

Q. Did you see one Allen Shivers down there?

A. No, sir.

Q. Do you recall others that you saw, by name, representing the State Government, other than the ones you have mentioned?

A. Well, you mentioned Mr. Gresham. I saw Mr. Penata, Sam Ratliff, and there were two others down there whose names I don't now recall, but whether all that group was there at the same time, I don't know.

Q. Do you know whether or not in the course of 1954 and 1955 there were a total of 40 of the 47 assistant Attorney Generals of Texas there?

A. I don't know that, sir.

Q. Do you know how many assistant attorneys general there were?

Mr. Wilkey: This is immaterial, Your Honor. We object on that ground.

Mr. Foreman: Withdraw the question.

Mr. Main, tell us whether or not the leading and largest hotel in Alice was leased as a headquarters of the various representatives of the different governments holding forth against George Parr and the Old Party in Duval County?

Mr. Wilkey: This calls for a conclusion. I doubt if this witness is qualified to make it. We object further that it is immaterial and object to the insinuation that such a thing ever even occurred.

The Court: I will let the witness answer it. It is sort of compounded, and unless the witness can say yes to every part of the question, I will let him answer it.

A. I will say I don't know.

Q. Where did you stay?

A. At the Alice Hotel.

Q. Where did the other representatives of the State and Federal Governments stay when they were there?

A. Those I knew about, Mr. Foreman, stayed at the Alice Hotel.

Q. You mean there may have been a great many there doing the same thing that you didn't know about?

A. I mean there were tourist courts that may have had some there, but I wouldn't know about it.

Q. What you mean is the hotel, as far as you know, was full of them and there may have been tourist courts full of them too?

A. No, I don't mean that.

Q. Did anybody except the anti-Parr group, was there accommodation in the hotel for anybody except those opposed to the Old Party during the time you were staying there?

A. That I don't know.

Q. Where was it you saw General Sheppard?

A. Well, I saw him one day in the lobby of the Alice Hotel, and I saw him on another time, another day, on the streets of Benavides.

Q. Mr. Main, did you ever see anybody at the Alice Hotel while you were staying there that was not working on or against the Parr organization in the 79th District that you know of?

Mr. Wilkey: That is a duplicitous question compounded, Your Honor, for conclusion opinion.

Mr. Foreman: I will rephrase.

At any time you were at the Alice Hotel during the time you were investigating, as you say, 90 per cent of your time from January to the latter part of May, 1954, did you see any person a guest at the Alice Hotel who was not on the same or similar business as yourself?

A. Mr. Foreman, I can't answer that yes or no. I can tell you that I knew of all those that were living there that were on the same work I was on, but what the other people were doing I don't know.

Q. Did you all work together to the extent of your working for Mr. Gresham, appearing before State grand juries, and comparing information as you gleaned and catalogued it?

A. I don't recall that I appeared before any State grand jury at any time in connection with this case.

Q. Well, I am not asking you about what you appeared before, but whether it was in connection with the case or not, while you were there investigating the Parr Party or the Old Party of these defendants, did you appear before the State grand jur

A. I don't recall that I did. I could have, but I doubt it.

Q. Well, have you appeared before the State grand jury in Jim Wells, whether from January to May or not, in connection with any phase of this?

A. I can state definitely I never appeared before any grand jury in Jim Wells County in connection with this or any other matter.

Q. Did you in Ducal?

A. That is what I am a little hazy about. I don't know for sure, but if I did, it would be only briefly and only on one occasion.

Q. All right. Now, Mr. Main, were you ever furnished any of the State grand jury testimony, or what purported to be State grand jury testimony to bring to the United States prosecuting attorney by any representative of the State of Texas, either Attorney General or otherwise?

A. I will state I did obtain some testimony which was delivered by me to the office of the United States District Attorney, yes.

The Court: Mr. Main, you have a habit of letting your voice fade away on the end. And I can't hear what you say and I am doubtful other people can. I will ask that you keep your voice sustained.

A. I will try to do that.

Q. Thank you, sir. I think you said, which you turned over to the—and that is the point at which your voice faded.

A. Turned over to the office of the United States Attorney in Houston.

Q. That was Mr. Malcolm Wilkey's office?

A. Yes. He is United States Attorney.

Q. Who was the assistant to whom you delivered this State grand jury testimony? Was it to Mr. Wilkey himself or one of his assistants?

Mr. Wilkey: I don't believe he testified it was State grand jury testimony. He testified it was testimony. He hasn't made clear what it was.

Mr. Foreman: I think the record speaks for itself.

Where did you obtain the testimony that you turned over to Mr. Wilkey and his office, or his assistants?

A. I believe that I obtained some statements or testimony, as to what it was I didn't read it myself. I merely acted as transmittal agent from the District Attorney in Alice, Mr. Sam Burris.

Q. Sam Burris?

A. Sam Burris, yes, sir.

Q. Is he or not a member or supported by the Freedom Party?

A. I am not prepared to say who supports him, Mr. Foreman.

Q. Do you know whether or not he was elected on the Freedom Party ticket?

A. I do not know that.

Q. All right, and what was the form of this testimony that Sam Burris turned over to you as transmittal agent to the United States District Attorney? Was it in question and answer form?

A. I didn't examine it, and therefore I can't answer the question.

Q. Will you tell us whether or not—you know what a deposition looks like?

A. Oh, yes.

Q. Did it look like a deposition?

A. Not having examined it, I couldn't say whether it was depositions or not.

Q. Could you tell us how thick it was?

A. It is my recollection there were a number of bound volumes, the number of volumes I don't recall.

Q. Could you tell us whether or not they were typewriter size paper?

A. I would say they were legal size paper, what we refer to as legal size.

Q. And would you tell us, stacked up, about how high that would be, if all stacked one on another, in inches or feet?

A. It would be purely a guess, and I would say six inches.

Q. About six inches high, and about eight by eleven inches long?

A. That would be a guess.

Q. Where were you when the Honorable Sam Burris, District Attorney of the 79th District, turned this testimony over to you?

A. As I recollect, he gave them to me in his office in Alice.

Q. At the State court house in Alice?

A. Yes, sir.

Q. Did you go there to ask for it?

A. No.

Q. You happened to be there on something else?

A. Yes.

Q. And did you know you were going to get it at some time or another on this trip and bring it before you went for it?

A. I don't recall there was any arrangement at all to that effect. I was there on another matter and he asked me to bring these papers in when I came.

Q. Did he say to whom you were to take it?

A. Mr. Wilkey, I believe he said.

Q. Did he say whether or not he had agreed to deliver it to Mr. Wilkey?

A. I don't recall. He may have said that, but I don't recall it.

Q. You do not recall whether written on the back of some of these books it purported to show it was testimony before the Duval County grand jury on a given date?

A. I don't know. I would like to explain that by saying it is my recollection at this time they were handed to me wrapped in paper, and that may be the reason I didn't eaxmine them. Having a kind of curious mind, I might have looked at them.

Q. And being a man of great character, you did not undo the package?

A. Oh, no.

Q. After getting to Mr. Wilkey's office, did you open it?

A. I don't recall that I did.

Q. Well, have you seen it since then? Do you know whether it is any of these beer boxes he has got over here loaded—could you look over there and tell us whether or not you can identify that testimony in the files that are here under Mr. Freeman's charge just back of Mr. Wilkey?

A. I shall be glad to look, but I would like to reiterate even though it is the testimony that you are talking about, I wouldn't recognize it because I didn't see it.

Q. There is no need to do it then. Thank you, Mr. Main. Have you perchance acted as transmittal agent for

State grand jury testimony from Mr. Wilkey down to Mr. Burris, or do you know?

A. I don't recall ever delivering any documents of any kind to Mr. Burris for Mr. Wilkey. I do not recall doing so.

Q. You do not recall. All right, and about what day or what month in what year was it you transmitted the six inches deep legal size package to Mr. Wilkey for Mr. Burris?

A. Mr. Foreman, I am unable to even hazard a guess on that because I made so many trips down there, and what trip it is I don't know.

Q. Well, could you by refreshing yourself—your memory by the date of the indictment—may we have it, please, Mr. Clerk—which appears to be on the 6th day of March, 1956, could you tell us whether or not—would that be as commencing date there or of the return of the indictment itself tell you whether it was before or after this?

A. I just could not hazard a guess there, Mr. Foreman.

Q. You don't know whether it was in 1954 or 1955?

A. No, sir, I don't.

Q. Do you know whether it was before or after the date of this indictment being returned in March of 1956?

A. No, sir ,I don't.

Q. Now, you yourself have been a State witness at various trials involving various of these defendants at various places in Texas, subpoenaed by this same Sam Burris as attorney for the prosecution, have you not, Mr. Main?

A. I have been a witness, Mr. Foreman, but not subpoenaed by Mr. Sam Burris.

Q. Ordered or sent over there by Mr. Wilkey?

A. No, sir.

Q. First, where have you been, whether you testified or not, Mr. Main? Where have you been at the time of trial where you conferred with Sam Burris, the prosecutor, in connection with the prosecution of any of these defendants?

Mr. Wilkey: Your Honor, We think that that is immaterial to any issued in this Federal mail fraud indictment. We think it is immaterial.

Mr. Foreman: May it please the Court, I have heretofore stated—

Mr. Wilkey: I don't want him making another speech to the jury. He has made statements and speeches, and we have made objections after making them. If we are to have another one, we object in advance this time.

The Court: I want to hear what he has to say.

Mr. Foreman: I have no desire, if he thinks I will steal his jury and inflame or prejudice them—I would as soon state it at the Bench.

The Court: Let's don't argue that. State your reply.

Mr. Foreman: It is our contention this prosecution here in Houston is because of the failure of the prosecutors in the State courts to convict these men and put them in the penitentiary, and that it is, as we have heretofore stated, purely political machinations engaged in by attorneys for the prosecution all the way to Washington against the Old Party and these defendants, and we are attempting

to show to the jury not only the exchange of grand jury testimony in violation of the laws of the State of Texas, but also the community of interest that witnesses have here furnished at the expense of the Federal Government for the prosecution of State cases and vice versa, and the interest of the witness in obtaining a conviction here wherever the witness has failed to obtain a conviction elsewhere, the various places in the State of Texas, including Tyler and Fort Stockton.

The Court: Well—

Mr. Foreman: My co-counsel gives me this additional expression of the thought better than I have done it, because we feel it bears on the interest and credibility of the witness as well as possible bias of the witness.

The Court: I will let you explore the latter things you have mentioned as far as you reasonably can, however, it appears to me that the interrogation has gone afield. We are not trying these men for any political offenses. We have an indictment spelld out and it is my intention to conduct this trial on the 20 counts in the indictment before us, and I will sustain the objection. I will sustain the objection of the United States Attorney. If you want to go into prejudice and bias of the witness, you may explore.

Mr. Foreman: I hope the Court didn't mean from anything I said I think this Court is doing anything but in a fair and impartial manner passing on evidence and questions that come before the Court. My direction was only to the prosecutor.

The Court: Yes. There are no political offenses charged here, and it is my intention to instruct this trial to the offenses charged.

Mr. Foreman: Let me say—I don't want to transgress the ruling of the Court. My last question was, how many places have you appeared—where have you appeared as witness to testify, or not, I believe was in the question, at the time the State was trying any of these defendants. May I be permitted to ask that?

The Court: You may, sir.

Mr. Foreman: Thank you.
Will you tell us?
A. Yes, Tyler.
Q. Tyler, Texas, when?
A. When they had the trial, whenever that was—
Q. November of 1955?
A. And at Fort Stockton.
Q. When?
A. When they had the trial there.
Q. June of 1956.

Mr. Wilkey: Your Honor, we are getting testimony, as usual, from counsel here. I would like counsel to ask this witness what he knows and if there is other testimony to be put in, we ask that counsel be sworn and take the stand.

Mr. Foreman: I will withdraw my remarks. I was merely trying to refresh the witness' memory.

The Witness: Fort Stockton and New Braunfels.

Q. Do you know when at New Braunfels?

A. Two occasions at New Braunfels, but what occasion I don't know right now.

Q. Did you testify at Tyler?

A. No.

Q. How long were you there?

A. I believe two days.

Q. And did you or not on various occasions there confer with Mr. Sam Ratliff, Assistant Attorney General, and Mr. Sam Burris, Prosecuting Attorney of the 79th District?

A. I talked to each of these gentlemen while I was there, yes, sir.

Q. And at Fort Stockton, By the way, were you subpoenaed at Tyler?

A. Yes.

Q. By the state?

A. Yes.

Q. And at Fort Stockton, did you confer with Mr. Sam Ratliff, the Assistant Attorney General of Texas, and Mr. Sam Burris, District Attorney of the 79th District?

A. I did.

Q. Were you subpoenaed at Fort Stockton?

A. I received a letter from the Attorney General's office asking I appear as a witness for the State.

Q. Were you paid by the State at Tyler?

A. No, I was not paid.

Q. Were you paid by the State at Fort Stockton?

A. No, sir, we don't receive pay as witnesses.

Q. All right. Then each place you have appeared in connection with this, your expenses have been paid by the United States Government?

A. Yes, sir.

Q. That includes bus trips to New Braunfels?

A. Yes, sir.

Q. Did you or not at Fort Stockton help carry the brief cases of the prosecution?

A. I don't believe at Fort Stockton I saw even a brief case.

Q. Did you or not help carry the evidence used by the prosecution in the case?

A. I don't recall doing that, Mr. Foreman.

Q. Did you at Tyler?

A. No.

Q. By the way, did you see Mr. Wilkey at the State trial in New Braunfels?

A. Yes.

Q. And was he there for several days?

A. I believe I saw him on two different dates.

Q. And Mr. Freeman, who is sitting here at counsel table, identified as a revenue agent, but in charge of the exhibits for the prosecution, did you see him there?

A. Yes.

Q. At New Braunfels?

A. Yes.

Q. Were either of these gentlemen participating in the prosecution at New Braunfels?

A. Not to my knowledge.

Q. Now, will you tell us your best judgment, so as to get the dates, Mr. Main, as to years or months approximately when it was you were—first you were at Tyler?

A. Of course, Mr. Foreman, I have those dates in my records, but I don't have them in mind just now, when they were.

Q. Well, was it—do you know what month of the year it was?

A. I don't even remember that

Q. Do you remember whether it was in summer, fall, spring or winter?

A. I believe it was in the summer.

Q. In the summer. Do you know whether or not we recessed for the A&M-Texas Thanksgiving football game?

A. I believe there was a recess, but for what purpose I don't know.

Q. You don't know whether it started around November 12 and ended November 16, 1955, in Tyler?

A. No, I don't.

Q. Well, how long was it—when was it as regards the Tyler trial that this indictment was returned March 6 of 1956?

A. I don't know, sir.

Q. You don't know whether it was in March following the trial in December?

A. I don't recall when the trial was at Tyler. That I don't recall.

Q. Well, at the time of the trial in Tyler, had D. C. Chapa been indicted in the Federal Court in this case?

A. I'm not sure, but I believe he had been.

Mr. Wilkey: Your Honor, we object to this line of inquiry. Obviously it is not directed to what this witness knows, or his bias, credibility, or anything else. We submit it is immaterial, irrelevant, and time consuming to the trial of this indictment.

Mr. Foreman: May it please the Court, I intend to prove this witness conferred with assistant Attorneys General and prosecuting attorneys offices in charge of this case with regard to the advisability of returning this indictment be-

cause of the outcome of the case at Tyler. That is what I want to ask him.

Mr. Wilkey: Your Honor, that is not true. It bears no relation to this witness' testimony, and furthermore Mr. Foreman has made that statement before in court, and he has been informed with evidence it is not true, and he knows it is not.

The Court: I will permit the interrogation, and I will instruct the jury that the jury will accept whatever answer will be given as to the sworn testimony. I will not tell the jury you must accept it conclusively, but it is the sworn testimony of the witness which you will receive as evidence and not statements or questions asked by counsel.

Mr. Foreman: May it please the Court, I object and except to the remarks of the prosecuting attorney as to what I know. He couldn't know what I know.

Mr. Wilkey: I know what he has been told, Your Honor.

Mr. Foreman: It depends on who tells me something as to whether I know it or not.

The Court: The jury is instructed not to consider the remarks of counsel.

Q. (By Mr. Foreman) Mr. Main, did you have a discussion with anyone after the Tyler case as to when or whether an indictment should be sought by the United States Government against the people who are now in-

dicted here, or any other people in the Parr Party, or I should say any of the individuals in Duval County?

A. To answer your questions without trying to evade it in any way, I don't remember when this trial at Tyler occurred that you referred to. The normal thing in cases of this kind is to confer with the United States Attorney, who has the sole responsibility for trying these indictments and naming the people who are indicted, and I certainly did confer with him on numerous occasions, but when I can't say.

Q. Did you likewise, just before you conferred with him, confer with Sam Ratliff and Sam Burris who prosecuted the Tyler case? Did you or not?

A. I conferred with Sam Ratliff and Sam Burris on numerous occasions.

Q. Did you or not confer with them after the outcome of the Tyler case, the jury's verdict announced, and before this indictment, and before you conferred with Mr. Malcolm Wilkey about this indictment?

A. Again I can't say because I don't know what date you have in mind over there.

Q. Well, let's say you did or not seek this indictment or ask for action on the part of the prosecuting attorney here at the request of Sam Burris and Sam Ratliff representing respectively the 79th District and John Ben Sheppard's office as Attorney General?

A. The answer, Mr. Foreman, is no.

Mr. Wilkey: Your Honor, I am going to object before any further questions are asked in regard to any conferences that either I or anyone in my office may have had

with Mr. Main or any other Federal investigator. I believe that is privileged under the law and it is against public policy to go into that, and these questions have gone on and on. I have pointed out they are immaterial and I believe now not only on the ground of immateriality, but the very good purpose that the relationship between investigator and the District Attorney's office is necessarily and must be, in the public interest, a confidential one. We object to any further questions along this line for that reason, Your Honor.

The Court: What says the defendant?

Mr. Foreman: May it please the Court, if we are going into a discussion of policy, and anticipating the same type arguments, not only contrary to public policy, but a felony offense subject to being placed in the Texas penitentiary to conspire to obtain grand jury testimony from a State court to be used for any purpose, and the whole defense of this case is that this is, instead of being a prosecution for the purpose of punishing a man for violating the law, being punishing a man for the people he has supported politically in national and state offices, and to some extent local district offices in Duval County, and we think that it is very pertinent. I don't want anyone to think I am reflecting on the personal integrity of W. D. Main but simply attempting to show from him, as one of the employees of the forces, that all of the forces were bent and turned and are done so purely for political purposes and not for the reason of vindicating justice, and I would rather have his testimony on it. I intend to use Mr. Wilkey on the same line, if permitted, but I want the best witnesses I can present. When I present some other witness,

I would reflect perhaps on their integrity and credibility, but when I have a man in whose probity and veracity I have confidence, I think the rules of evidence should permit, and I think they do permit me to show whatever animus might exist, and not only on Bill Main, but as to whatever the forces are directing this prosecution and for which he is just a little chip on the ocean.

Mr. Bottler: Your Honor, counsel has just assured the Court and everyone in it that he has the utmost faith and confidence in the probity of Mr. W. D. Main as a witness. He says he wants to use him as his witness. As I understood it, the only ground of going further in this was to test Mr. Main on his credibility. We suggest Mr. Foreman has just taken that issue out of the case, and we ought to go further with the case rather than the semantics of defense counsel.

Mr. Foreman: May it please the Court, by utterly ignoring two thirds of my remarks and centering on the nut instead of the bore, we are permitted to go into this line of cross examination—

The Court: The test is bias and prejudice.

Mr. Foreman: Yes, Your Honor.

The Court: Very well. Will there be further interrogation along that line?

Mr. Foreman: As short as I can make it.

The Court: Very well.

Mr. Foreman: Not necessarily as much as there are objections.

Mr. Wilkey: The point is, he went into it on the grounds of bias and prejudice, and then he makes a speech on the man's credibility and says it is beyond reproach. That is the point of Mr. Bottler's—

Mr. Foreman: Mr. Bottler makes most of his speech on what I said, and Mr. Wilkey makes his on what Mr. Bottler has said. I am not going to take up the time of the Court on what he said.

The Court: Very well. Go ahead.

Mr. Foreman: I will rephrase it. I think I know where I was.

With whom did you talk, if anyone, after the Tyler case and before the witnesses commenced being subpoenaed for the Federal grand jury for this indictment we are now trying.

A. I talked with the United States Attorney.

Q. And whom else, please, sir?

A. Mr. Wilkey, Malcolm R. Wilkey.

Q. Well, I understood Mr. Wilkey was the one you were talking with. You talked with Sam Ratliff and Sam Burris, and whom else?

A. I beg your pardon, Mr. Foreman, I don't believe I followed your question. You asked—

Q. I set out grand jury—after the trial jury in the Tyler case returned its verdict in the State of Texas vs D. C. Chapa, did you or not talk with Sam Ratliff and/or Sam Burris?

A. It gets back again to what I said a while ago. I don't know what date that is, but I have talked to Sam Ratliff on occasion and Sam Burris on occasion, but whether it was after that time or before, I can't say.

Q. Do you know a man who was at one time Executive Assistant Attorney General of Texas, named McCormick?

A. Never knew him in my life.

Q. Did you talk with Willis Gresham?

A. Never met him in my life.

Q. And any other assistant attorneys general besides Gresham and Ratliff?

A. I believe I talked to Penata and there may have been, I am sure there were, one or two others whose names I don't recall, and the conversation was only brief.

Q. Did you talk with anyone in which the outcome of the case in Tyler was discussed in connection with the returning of a Federal indictment?

A. I don't recall that.

Q. Is it possible that you did so?

A. It is possible I may have discussed the outcome in the trial at Tyler, but it would not have been possible I would have coupled it with any bearing on this matter.

Q. Whether you coupled it or not, was there a discussion, whether by you or someone else?

A. I don't recall any such discussion.

Q. When did you last discuss this case with Jim Dowd, an Assistant U. S. Attorney?

A. Shortly before his resignation.

Q. Do you know when that was, sir?

A. No, I don't, sir.

Q. Was it before or after this indictment was returned?

A. I believe the indictment was returned while Jim Dowd was still in office.

Q. With that understanding, can you answer whether it was before or after the indictment was returned you discussed this case with Jim Dowd?

A. Well, I am sure if Jim Dowd was Assistant United States Attorney after the indictment was returned, I discussed it with him.

Q. Now, Mr. Main, will you tell this jury how many of the items on Government Exhibit 222 also appear on Government's Exhibit 10?

A. Mr. Foreman, I could determine that by checking the two, Government's Exhibit 10 and that exhibit.

Q. Have you so determined prior to taking the stand?

A. No.

Q. Then you do not know whether all of them appear on Government's Exhibits 9 and Government's Exhibit 10 or not, do you?

A. No, I don't.

Q. You do not know whether they all appear again on or in Government's Exhibits 1, 2, 3, 4 and 5, do you?

A. No, I do not know that.

Q. Have you worked with the exhibits in this case to the extent Government's Exhibit 1, 2, 3, 4 and 5 mean something to you? Do you know what they are?

A. No, I don't know what Government's Exhibits 1, 2, 3, 4 and 5 are.

Q. You don't know whether they are in the annual reports to the Texas Education—

A. No, I don't know.

Q. Do you have them?

A. I had photostat copies of the annual reports of the Benavides Independent School District, but as to the G numbers I have no knowledge.

Q. Have you examined any of the exhibits in this case since this case started so as to determine whether or not on any of them G 222 items appear?

A. What is G 222, Mr. Foreman? What is it?

Q. It is the last thing you were asked about, I think. I believe this is it (tendering to witness).

A. What is your question?

Q. My question is, have you checked any exhibits in this case so as to determine whether they appear correctly, the same exhibits that are on what Mr. Wilkey calls a summary here. I refer to that as Government's 222. Have you checked any exhibit in this case against the items on that Government's 222? Have you or not?

A. The answer is that I prepared this myself, personally.

Q. Well, from what did you prepare it?

A. From the annual reports of the fiscal years 1950, '51, '52 and '53 of the Benavides Independent School District.

Q. You mean by that you typed this?

A. Yes.

Q. With a typewriter?

A. Yes, sir.

Q. What did you type it from, please?

A. The photostat copies.

Q. Oh?

A. Yes.

Q. Then when you say you have checked it, you have checked it against your personal records and not against any exhibits in this case, isn't that true, sir?

A. I have checked this against photostat copies of these various annual reports which—

Q. Mr. Main—

Mr. Wilkey: Let him complete it.

Mr. Foreman: Go ahead.

A. —which annual reports the original of I personally examined page-by-page in the office of Mr. O'Connor of the Texas State Teachers Agency in Austin, Texas to be sure it was all there, and then after I determined that, I made up all of these various sheets. That is how it was done.

Q. Made up all these various what?

A. Listings.

Q. When did you make these?

A. This particular one I made May 29.

Q. Of G 222?

A. This list was made May 29 of this year.

Q. G 222 was made on May 29. Where?

A. In my office, right around the corner.

Q. Were any of these defendants present?

A. No.

Q. Was anybody else present except you?

A. This is all.

Q. Then they could not be on here, G 222, if they had not been on the original annual reports from which you copied them, could they?

A. That would be my theory, sir.

Q. And will you tell us how long it took you, how many hours approximately, to search through these various compendium reports to extract the information you have on G 222?

A. In this instance, I think it took about four hours.

Q. Will you tell us at whose suggestion you spent this arduous effort?

A. At the United States Attorney's suggestion.

Q. Which one?

A. Mr. Wilkey.

Q. Was it to help obtain a conviction in this case you did it?

A. Well, all work that I do is with a view to obtaining facts.

Q. And after an indictment, it is all done that you do with a view to obtaining a conviction, isn't it, Mr. Main?

A. Well, I wouldn't say that.

Q. Would you be just as willing to do four hours of work for me, for the defense, as you did for the prosecution?

A. No, sir.

Q. Isn't it true you have not only worked these four hours, but numerous other hours and days and weeks since the last trial of this case in order to help obtain a conviction?

A. It is true I spent many hours in the investigation and preparation for the United States Attorney of material facts and the assembling of them.

Q. I see. For the prosecution only, weren't you, Mr. Main?

A. That is my job.

Q. Yes, sir, and would you estimate the number of days and hours you have dedicated to attempting to shore up the prosecution's case since the November trial of 1956 of this same case?

A. I would say that approximately 50 per cent of my time has been spent on this.

Q. Going back over and attempting to dig up new, what you call, material facts for the prosecution?

A. Various and sundry work.

Q. Where have you traveled in that connection? Any place other than Houston, Mr. Main?

A. No, I haven't.

Q. You haven't been anywhere?

A. You are speaking of last November?

Q. Yes, sir.

A. I don't—I may have been down there once. I don't recall. I may have been since then.

Q. Didn't you go down in January or maybe even at Christmastime, just right after the trial, to go around and interview all of the witnesses, or several of the witnesses, who had testified for the defense? Didn't you do that?

A. I don't recall.

Q. I will ask you specifically with reference to Hilda Chapa Gonzales. Did you not interview her?

A. I was present at a time when she was interviewed.

Q. Well, with reference to Maria Estella Garcia, did you or not interview her?

A. Yes.

Q. And where?

A. In her home at San Diego.

Q. Did you or not interview or undertake to interview Mrs. Verlon Bridges?

A. I don't recall talking to her at all.

Q. Velia Oliveira. That is the same person. I thought you might know her under a different name.

A. No.

Q. Do you recall a Mrs. Gonzales?

A. You mean Hilda Chapa Gonzales?

Q. No, another—pardon me, Mrs. Barbara Gonzales, the one whom I believe works—

A. Yes, she works in the cafeteria. That is right, I did talk to her.

Q. Did you not interview Mrs. Santiago Utley?

A. I believe so, in Alice.

Mr. Wilkey: Are those alleged to have been witnesses in the last trial? I don't recall them.

Mr. Foreman: I will develop.

Where did you get the names of Mrs. Barbara Gonzales, Mrs. Santiago Utley, and Mrs. Maria Estella Garcia to interview?

A. I don't know, Mr. Foreman. There were many, many names whose names the interviews developed from the inception. I couldn't tell you. There is many many witnesses and people who had information; and in seeking information we talked to one person and we come up with maybe five names we may use or we may not use.

Q. Do you know whether or not you came up with those five names from Mr. Malcolm Wilkey? Did he give up them and tell you they would be here as witnesses, present, ready to testify if called by the defense, and ask you to go talk to them?

A. Mr. Wilkey may have given me some names, that he would tell me to interview them and he would not tell me if such-and-such happened.

Q. Was there any offer made on behalf of the prosecution in this case to any witness in consideration of their changing their testimony, that you know of?

A. I never heard of that.

Q. Were you authorized to offer Maria Estella Garcia, a job with the United States Federal Government if she would, in consideration of it? When I said Maria Estella Garcia, I should have said Hought. It was formerly Maria Garcia.

A. The answer is no.

Q. Was any such offer made by you Mr. Main, to Maria Estella Hought, that is, if she would help the Government or testify for the Government at the next trial of this case, that she would be assured of employment by the United States Government?

A. The answer to that is no.

Q. Where was Maria Estella Hought interviewed?

A. In her home in San Diego, Texas.

Q. Who was present?

A. Her mother, I believe. Her mother was there, but whether she was in the room, I don't recall.

Q. Her mother is former County Commissioner of Duval County?

A. That is what she told me.

Q. Mr. Main, at whose suggestion did you make these trips to Duval County to interview the witnesses you have mentioned?

A. Perhaps at the request of the United States Attorney.

Q. Would that perhaps be Mr. Malcolm Wilkey?

A. Yes.

Q. Do you recall any more definitely than perhaps? Wasn't it definitely at his request, sir?

A. Mr. Wilkey has been assisted by his first assistant, Mr. Bottler. From time to time, I received instructions from Mr. Bottler.

Q. Then it is your testimony you do not recall something that happened four or five months ago, as to whether it is Mr. Wilkey or Mr. Bottler?

A. It could have been both.

Q. All right, but you don't recall whether it was Mr. Wilkey, Mr. Bottler, or both of them together?

A. No.

Q. You don't recall where it was?

A. I am pretty sure it would have been in their office. They wouldn't come down and tell me at the federal office building what to do.

Q. The only way that you have of assuming that it was in their office is because of the dignity of the two positions, and that you would defer to the position that they represent; is that correct? You have no recollection one way or the other as to where it was or when it was?

A. No, I do not.

Q. And you don't know when, what month it was?

A. No, I don't know.

Q. Do you have a better recollection, Mr. Main, as to remote events in time than as to recent events in time? Could you recall perhaps something that occurred on February 5, 1954 better than something that perhaps occurred February 5, 1957?

A. Is that a question?

Q. Yes, sir, that is my question.

A. The answer is no, I do not have. I would be glad to give you the explanation.

Q. You don't have a better recollection for remote events than you do for recent events?

A. No.

Q. I see. But as a matter of fact you have a very wretched memory for recent events, don't you, Mr. Main?

A. What do you mean by wretched?

Q. I mean it surprises you yourself now, does it not,

that less than perhaps six months later you do not recall who told you to go down to Duval County and talk to the different witnesses, the witnesses here to testify for the defense?

A. Mr. Foreman, I recall that I was instructed by the United States Attorney's office to do this, either by him personally or his assistant, but which one I don't now recall.

Q. And the fact that you don't recall it amazes even you, doesn't it, Mr. Main?

A. Not very. There are many questions coming up from time to time daily that we discuss various features.

Q. I see. All right. But you do recall in great detail every fact and item. You evern recall the amount of money D. C. Chapa makes or made, that he made no claim to you he also had a commission.

That you recall each item of your conversation with reference to these 30 checks or more, checks of Mr. Oliveira, that he said yes, he got them.

You recall not only the date he was born, the date he graduated from school, the date he signed the contract, the date he went to work, the date he opened his office, the date he resigned, each of these items of O. P. Carrillo's conversation, you recall all of them, do you not, Mr. Main?

A. Yes. Can I give you the explanation?

Q. Certainly.

A. When we interview people and we make investigations, we at the time, or immediately thereafter, make memorandums of the time, place, and various and sundry details, and these memorandums we have to refresh our memory with. That is the reason I can remember those various dates, places and times. Whereas, when the United

States Attorney tells you something verbally, or his assistant, you don't make a note of it. You go ahead and do it, but you know they are both working on the same case. You know it is for the same purpose, so you don't recall which one it was said it. They might be both in the same room.

Q. Is that the explanation?

A. That is the explanation.

Q. Then Mr. Main you make the notes on everybody except your own to try to trip them?

A. I don't understand you.

Q. Is the reason you make the notes of the people who are not on your side, and is the reason you make them of people like O. P. Carrillo and Oscar Carrillo and D. C. Chapa and Octavio Saenz, and you don't make them as to Mr. Dowd or Mr. Bottler or Mr. Wilkey because you want to be able to use your information to trip the folks you are interviewing down there?

A. That is not the case at all.

Q. It isn't? Well, did you or not make a note as to the date you interviewed Mrs. Utley and Mrs. Barbara Gonzales and Mrs. Maria Estella Hought?

A. Yes.

Q. Of course you knew the birthdate and year of Mrs. Hought?

A. I will have a record of it if I asked her.

Q. Did you ask her?

A. I don't remember whether I did or not.

Q. Do you remember when you interviewed her?

A. No, I don't.

Q. Do you remember when you interviewed Mrs. Utley?

A. No.

Q. Or Mrs. Barbara Gonzales?

A. No.

Q. You don't know whether it was 1956 or 1957?

A. I would guess '56 or early '57.

Q. You don't know?

A. No, but I can tell from my records when it was.

Q. I see. And you have then checked your records carefully so as to be exact and definite as to when O. P. Carrillo was born, opened his office, graduated from St. Mary's or the University of Texas?

A. Yes.

Q. You did that so as to better prepare as a witness for the prosecution?

A. I did that so as to better be able to state the facts as I have.

Q. Then without those notes that you made when you interviewed somebody as remotely as 1954, or even January of 1957, or December of 1956, you would be hopelessly lost, wouldn't you, Mr. Main?

A. Mr. Foreman, if I thought there would be any reason at all to again refer to that information, I would make a note of it. It is in those instances where we don't figure it is any good we don't make any record, it is useless information.

Q. When you say that, you are speaking of your memory? Your memory would be no good without your notes?

A. That is right, to a period of time.

Q. You have, for the purpose of testifying for the prosecution today, memorized certain things from your notes, haven't you, Mr. Main?

A. Yes, sir.

Q. What you are really doing is testifying about what

you wrote down rather than what you remember, aren't you?

A. Mr. Foreman, after reading those things over and remembering, I am testifying what I remember. The notes are merely an aid to what I remember.

Q. Could you remember anything you have testified to if you hadn't recently read your notes?

A. Probably there were many, many details developed in this investigation that would cover many pages, and I don't believe that I could, or anybody else could, remember all the details that were brought out and developed in the course of the investigation.

Q. I am not criticizing. I am simply establishing whatever ability you have to recall. The point is, you are constantly and have for 19 years been in investigation, interviewing prosecution witensses and prospective defendants, and what one may have said 19 years ago may merge into what one said 19 months ago or 19 days ago, if you didn't write it down?

A. That could be true in the case of anyone.

Q. That is true especially to you?

A. Oh, yes, I am getting older every year.

Q. Would you give us an estimate as to how many hours you have pored over your notes to memorize your testimony?

A. That would be difficult.

Q. Would you say as many as 40 or 50 or 150 hours?

A. I have concentrated and studied my notes on various and sundry occasions, Mr. Foreman, and not on all occasions was it done for the purpose of testifying. It was done for other purpose, other reasons, so therefore to break it down would be rather difficult, to even hazard a guess.

Q. If we do it all over without breaking it down, would you say you have studied your notes to try to recall what happened as many as 200 hours?

A. Two hundred hours? That is almost a year's time. Two hundred and eight is almost a year, five days a week, eight hours a day.

Q. Two hundred and eight? It might be for government employees.

A. I don't know. I would say that I haven't devoted to the review of my testimony more than eight hours.

Q. All right. Now, Mr. Main, do you know—where would your notes be of your last venture, or sally, or trip into Duval County so as to tell when and what each of these, Mrs. Utley, Mrs. Gonzales, Mrs. Maria Estella Hought's conversations were?

A. That would be in my office in the federal office building.

Q. Down at the—on Fannin?

A. Yes.

Q. All right, and would that be in question and answer form?

A. No.

Q. It would be simply a summary or resume. Was it made at the time?

A. It would be either made at the time or immediately thereafter.

Q. You do not now recall whether you made notes as you talked to any or all of them, or not?

A. That is correct.

Q. I believe you testified with reference to the undertaking to find some of the people whose names appear on Government's Exhibits 9 and 10, that you made your first trip down there in 1954 for that purpose?

A. That is right.

Q. Was it between the January and May trips?

A. Yes.

Q. And the next trip you made was in 1956?

A. No, we were down there in 1955, too, Mr. Foreman, some.

Q. When in 1955? You say we?

A. Inspector Cauley and myself.

Q. And when in 1955 were you and he there? Were you attempting to find such people as you were looking for, you and Inspector Cauley, or were you attempting to find that you couldn't find them?

A. What we were attempting to do was determine whether or not those individuals listed on those reports were actually existing people, did they live, did they ever live, were there such people, or just names out of the hat put in there. That is what we were trying to do. To answer your question, I don't want to mislead you on that, the principal inquiry as to the search for those names listed in those reports was made in January and February, and November of 1954.

The 1955 investigation was other facets, phases of it.

Q. Isn't it true that after the last trial, that is the trial of this case commencing in November and ending in December of 1956, that you made a renewed trip down into that area talking to postmasters and asking them to qualify as better witnesses next time? Didn't you do that?

A. I made another trip down there and reviewed with them those names of those people that I was trying to determine whether or not they were bogus or they were actually living people.

Q. I see, and that was when—when was that last time you were trying—

A. I believe that was November, 1956.

Q. That was after the trial, the last trial?

A. I don't recall that either.

Q. You don't. Then November of 1956 would have been nine months after this indictment was returned that you were attempting to establish the validity of the indictment, that is, as to whether or not these people on Government's Exhibits 9 and 10 actually existed? You had doubts about that?

A. Not necessarily. I just wanted to be sure.

Q. All right, but you weren't sure from your January to May investigation in 1954. Were you sure in your November 1956 investigation that there was no such people as those names in 9 and 10?

A. Based on the statements made to me by people who had lived there practically all of their lives, who knew everybody in that vicinity, they didn't exist, and I believed that and I believe it now.

Q. My question is not what you believed, but my question is, why did you go back in November, 1956 to establish something you only haphazardly investigated in January to May, 1954, and you felt you might have slipped and you ought to, for your own conscience, make a further investigation? Was that your—were you impelled and driven by your own sense of justice and fairness, and directed by the prosecution to go there in November, 1956?

A. The United States Attorney or his assistant may have suggested that.

Q. And you actually did it, did you not, while the trial was going on here so you could qualify as a witness in the November trial of these same defendants in this case?

A. I did not.

Q. When did you go with reference to the trial of these defendants in November?

A. I don't know. I believe this was prior to the time the trial started.

Q. Do you know whether it was or not?

A. I know it went to the end of December, and we closed it out in December, didn't we?

Q. Yes.

A. This is November, and I think prior to the opening of the trial.

Q. You don't know whether the trial opened on November 4th or 6th, or not?

A. Gosh, no.

Q. November 7th. You don't know whether it commenced November the 7th of not?

A. I believe it did.

Q. Set for the 4th and then the 6th, and then set for the 7th?

A. I believe that is right.

Q. With reference to that being established, could you tell us when it was you went down there to make this last roundup?

A. Again I would have to look at the—at my memorandum on it, but I think it was before this trial started and I am certain it was not during the course of the trial, not while it was going on.

Q. Because you were here working with the witnesses during the trial?

A. I was here getting hotels, lunches, and so on for the witnesses, some of them, not working with them.

Q. You were liaison between the witnesses and the prosecution? All of the prosecution witnesses at the first trial,

so far as any fiscal or financial arrangements or living accommodation or other considerations requires, you were the liaison agent or representative between the prosecution and their witnesses, were you not, Mr. Main?

A. Well, it would depend on your definition of liaison. I didn't convey any intelligence between the prosecution and the witnesses.

Q. I am not suggesting that, Mr. Main, because the rule was invoked. Simply you knew the witnesses and some of them didn't know them by name, and anything they wanted told or wanted done, you were the representative between the prosecution and the prosecution witnesses, weren't you?

A. You could say that.

Q. Then that is how you know you didn't go down there at least while the trial was on? You were here every day of the trial, isn't that true?

A. I think so. I should have been, if I wasn't.

Q. Then if you did go down while the trial was on, it was during a recess in the trial?

A. Yes. Then the trial wouldn't have been on.

Q. And it was to better qualify the testimony to the facts the prosecution wanted to establish, wasn't it?

A. Well, I made the trip down there, I am sure that is the sole purpose of the investigation, to tighten the case up.

Q. That is right, and you did that likewise at the direction of Mr. Wilkey or Mr. Bottler, of both of them?

A. Probably so.

Q. You don't know which of the two of them told you to go down there to tighten this up?

A. No.

Q. Do you recall whether the expression, "We have got to tighten this case up," came from them or an afterthought you acquired from whatever you said?

A. I beg your pardon, Mr. Foreman. I didn't correctly hear that question.

Q. You said, had reference to your expression, your reason for going down there, was to tighten the case up. I correctly quoted you on that, didn't I, sir?

A. That is in effect what I was doing, but I wasn't instructed by anyone to tighten it up.

Q. That is what you were trying to do?

A. All investigations are for that purpose.

The Court: I am suggesting a recess. Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Mr. Foreman: Shall I proceed?

The Court: Yes, sir.

Q. (By Mr. Foreman) Will you look at this list of some 59 names and just check it once, that you talked with, discovered as witnesses before the indictment or trial of this case, putting a check mark by them, please, sir? In two or three places there are two names on one line, Mr. Main.

A. Just this one page, Mr. Foreman?

Q. No, sir, both pages.

(Short interval.)

Thank you, sir. Let's see if I read them correctly then. These witnesses were all approached, contacted, talked with by you in the work you have detailed heretofore you did in investigation of this case, is that true? T. J. O'Connor, Troy Carey, Uvaldo Serna, Raymond Sparkman, Donato Flores, Otto Runk, C. R. Cuellar, Jose Lozano, W. L. Moses, Jose Vaello, Richard Barton, Carl Williams, Mrs. Edna Fitch, Christine Ray, Bernice Hickman, Mrs. Mildred Daniel, W. Franklin Reed, is this Espiridion Martinez or Speedy Martinez? Francisco—you don't know about him?

A. No, I don't remember him, that one. I think I would.

Q. We will come back to them in a minute. Reynaldo Maldanado, Mrs. Conrado Carrillo, Alfonzo Gonzales. Do you know either of those?

A. Yes.

Q. Mrs. Hoyd L. Ray, W. L. Price, O. W. Greene, P. W. Pitzer, B. G. Moffett. Is that T. T. or L. T. Cramer?

A. I think it is L. T.

Q. Amador Caballero, Sr. I believe we have got Mrs. Ray there. J. E. Beall, Amador Caballero, Jr., Romero Morin, R. R. Gonzales, Gabriel Garcia, Rosa Perez, J. W. Roach, Reed Nunley and William A. Dimler and Jo Faith Baker. Have I correctly called off those you have talked with?

A. That is right.

Q. And in addition you are uncertain about these two, Francisco Carrillo and Francisco Sanchez? You may or may not have talked with them?

A. Yes.

Q. Actually you have talked with all of the witnesses except John Yochem and Jose Lopez and Beto Segura?

A. Is this man from San Diego, Lopez?

Mr. Foreman: He asked me something, Your Honor, if a man is from San Diego. Is he?

Mr. Wilkey: Yes.

Q. (By Mr. Foreman) You talked to him, too, then?

A. Yes.

Q. You did not talk to Hayes, the banker?

A. Yes, I checked him.

Q. You talked to the banker? Did you talk to O. T. Light?

A. I didn't talk to him.

Q. Beto Segura, a truck driver, at one time employed by Oscar Carrillo, did you talk to him?

A. No.

Q. Then the numbers you did not talk to were 6, 7, 8, 9?

A. There is this one.

Q. Did you talk to her?

A. Not about the case. I did talk to her, but not about the case (indicating).

Q. And 10, 11, 12—of the 58 witnesses who preceded you, there are only 12 that you did not either discover, talk with, or interview in connection with the case?

A. At some time or other.

Q. Yes. As a matter of fact, to use the vernacular of the investigating officers, you practically made this case for the prosecution, didn't you, Mr. Main?

A. I wouldn't say that, Mr. Foreman.

Q. Well, do you know anybody that worked any longer or more assiduously in the investigation of the case then yourself?

A. The answer to that would be no, but at the same time I don't want to disparage anybody else's efforts.

Q. Well, of such glory, if there is, there is enough to share. But you did do more actual time on it and a great deal of it was initiated by you. You didn't have to get instructions on it, isn't that true?

A. All investigation made by our services are made without specific instructions, primarily.

Q. Well, primarily, did you cover a great deal of territory, depending on whether it is prime or merely—I mean primary, you could have had instructions or not, isn't that what you mean?

A. We could have, but ordinarily we don't.

Q. Isn't it true that many of the interviews were made under the surveillance of Rangers wearing boots, cowboy hats, and packing at least one to two forty-fives? Is that true or false?

A. I would say that a very, very few of the people who you have on that list were interviewed in the presence of Texas Rangers or any other State official.

Q. Didn't you get some of your best witnesses that way?

A. That would depend on who the witness was.

Q. Let's be specific. Where and how did you capture Romero Morin?

A. I believe we found him working in the City Hall at Benavides.

Q. And you interviewed him in the confines of the walls, and not under the guns of the officers?

A. No, we asked him to come to the Benavides Independent School District office and talked to him up there.

Q. Did you ever talk to him in the presence of one or more Texas Rangers wearing two or more guns?

A. I don't remember that. We certainly didn't the first time.

Q. Did you talk to him specifically in an automobile in which there were armed Rangers in and on each side of it?

A. I don't recall that.

Q. Is it possible you did, or what do you mean by that, please, sir?

A. I mean that I don't recall any occasion when we went anywhere down there to interview anybody when there were Texas Rangers sitting in the automobile and we had the interview standing by the side of the automobile.

Q. I am not suggesting you went there when that occurred, but did you go there and get one of these witnesses and sit him down and bring them there to stand in the manner I have discussed while you did interview him?

A. I can't honestly think of such an instance where I did that.

Q. Were you present when such an interview was going on of one Romero Morin?

A. I do not recall any such instance.

Q. Now, do you know a Mr. Homero Gutierrez?

A. Yes, I believe so.

Q. Where did you first, and under what circumstances, see him?

A. Unless I have got him confused with somebody else, I think I met him in Benavides. I am not sure about that. I may have him confused with somebody else. I am not trying to evade your question, but that is the fact.

Q. I know that, but I will help you. Homero Gutierrez is the person who was the guest of the Government for seven or eight days during the last trial at the William

Penn or Sam Houston Hotel, discovered by Sam Burris at some position or job in San Antonio, and interviewed, I think, at your request by Mr. Burris and later brought here by agents of your service and turned over to you. Does that help?

A. I know the individual to whom you are referring, if you will restate your question.

Q. Is that the one you think you first saw at Benavides, or do you have him confused?

A. I have him confused with someone else.

Q. Now that we have identified the person to whom I refer as Homero Gutierrez, when and where did you first see him?

A. I first saw him in the federal office building in Houston.

Q. And when, in connection with this trial of the former case against these defendants before Judge Hannay on this floor last fall or winter?

A. Sometime during the course of the trial, he came over here to check in as a witness.

Q. And do you know what persuaded him to come over here and, as you call it, check in as a witness?

A. I assume the same manner that any other witness.

Q. I am not asking the witness for an assumption. If he knows, I would like him to so state.

A. He was subpoenaed as a witness.

Q. He was subpoenaed as a witness?

A. That is my understanding.

Q. Isn't it true he was not subpoenaed, but on the other hand brought over here by agents of the government, meaning postal inspectors?

A. He did come to Houston with a postal inspector.

Q. Now that you have reconsidered, or that I have emphasized the point, do you still recall or have any recollection as to whether he was or was not subpoenaed as a witness?

A. Truthfully I don't know. I didn't see the subpoena served on him, and I don't know. I can't answer that.

Q. Well, do you know whether or not there was any discussion between you and anybody connected with the prosecution that he must not be subpoenaed because we do not want the defense to know that we have him. Was that said or not?

A. Not to me, it wasn't.

Q. Who was the agent that brought him over here from San Antone without a subpoena?

A. He came over here with Inspector J. H. Osborne.

Q. O-s-b-o-r-n-e?

A. That is right.

Q. Is he stationed here or San Antone?

A. In San Antone.

Q. Do you know how Inspector J. H. Osborne learned of the availability of Gutierrez?

A. I sure do.

Q. Did he learn it from Sam H. Burris, State District Attorney of the 79th Judicial District?

A. No, sir.

Q. Well, do you know whether or not Sam H. Burris went to San Antone during the course of this trial in November and December of last year to talk with Homero Gutierrez before Inspector Osborne brought him over here?

A. I do not know that.

Q. And when Inspector Osborne arrived with him, was it daytime or nighttime?

A. I don't recall whether it was daytime or night.

Q. You interviewed him at the federal building. Was it daytime or nighttime?

A. I did not interview him at any time.

Q. When you first saw him at the federal building in Houston, was it at your office?

A. It was at my office in the federal building.

Q. And was it daytime or nighttime?

A. Daytime.

Q. And did you or not tell Homero Gutierrez where to stay?

A. I don't believe I did.

Q. Did you or not make arrangements for the payment of his hotel bill?

A. I have done that.

Q. And did you or not actually pay it yourself?

A. No, sir.

Q. Did you or not pay him money for his time here?

A. I did not pay him a nickel.

Q. Do you know whether or not he was paid out of some funds of your department, other than witness fees?

A. If he was, I know nothing whatever of it.

Q. Do you know whether he was paid any money by the Federal Government other than witness fees?

A. I do not.

Q. Did you have any discussion with anyone concerning the fact that he should be paid even though he was not subpoenaed?

A. I don't recall that.

Q. You don't recall whether you did or not?

A. No, I don't.

Q. If you had had such a discussion, with whom would this have been with?

A. Necessarily with the United States Attorney.

Q. Did you have a discussion with him with reference to the payment of certain witnesses in this case that were not paid as witnesses by witness script?

A. I know of no instance where any witness was not paid as a witness by the regular witness fee except the postal employees.

Q. Except what?

A. The postal employees.

Q. Do you include in that answer the fact that you know of no witnesses receiving funds other than witness fees at the former trial of this case?

A. That includes those.

Q. And likewise this case too?

A. Yes, sir.

Q. I see. That is this trial that commenced in May. Did you or not see Homero Gutierrez, work with him, talk with him several times while he was here?

Mr. Wilkey: Your Honor, he is repeatedly leading, and he is on an entirely new topic here.

Mr. Foreman: I don't think so, Your Honor. It might be a new topic, but he is on cross examination on his bias and animus.

The Court: Very well, you may continue.

Q. (By Mr. Foreman) Did you or not, please, sir?

A. As I recall, I walked up the street from the federal building with this man you mention and Inspector Osborne, and they went into the Sam Houston Hotel and I continued on up to the federal building here, the United States Court House.

Q. Is that the only time you saw him or talked to him or walked with him?

A. I believe it is, Mr. Foreman. The occasion then was that he was down to my office for an interview by somebody else, not me.

Q. Who?

A. I believe United States Attorney.

Q. Mr. Bottler or Mr. Wilkey?

A. Mr. Wilker, the United States Attorney.

Q. And after interviewing him, they did not use him as a witness, did they?

A. That I don't know.

Q. Is that the only time you saw him when he was there in your office, and you walked up to the Sam Houston Hotel with him?

A. I may have seen him, but to talk to him and be sure, I couldn't answer that.

Q. Do you know how many days he remained here?

A. No, I don't.

Q. Do you know whether Osborne remained the entire time Gutierrez remained?

A. I know Osborne was here several days.

Q. Do you know whether or not he was with Gutierrez practically all the time Gutierrez was here?

A. I couldn't say. I know he was here, but whether he was with him or not, I couldn't say.

Q. Did you ask him to be with him?

A. No.

Q. Isn't it true Homero Gutierrez was sent for when Cadina was testifying? Isn't that when you sent out word to Osborne to bring Gutierrez here?

A. I don't know who was testifying, Mr. Foreman.

Q. Was anything said by you to Homero Gutierrez at your office or the Sam Houston Hotel about "Don't come near the court house. Stay away from the court house."

A. I never saw Gutierrez at any place except the federal office building on the occasion which I have narrated, and possibly in the halls up here, but I never discussed anything with him, even where he was from.

Q. Did you issue instructions for Mr. Osborne to see that Homero Gutierrez did not come near the court house?

A. No, sir.

Q. Did you to anyone?

A. I issued no instructions to anybody.

Q. Now, Mr. Main, I hand you Government's Exhibit 222, please, sir. I assume they were arranged in the same order that I have them in. The first page, does it say "Page 72, 7-31-52, equipment for schools, paid 8-5-52, $200"?

A. The first page I have here is Page 35.

Q. I am sorry. They are not arranged in the same order.

A. This is August 31, 1951.

Q. Do you know whether or not Jesus—start with the first page. Everything on the first page has salary and is from August 31, 1950 to May 31, 1951, ten $100 checks, each for salary?

A. That is right.

Q. Do you know whether or not Jesus Oliveira did in truth and in fact watch the building, the buildings and grounds of the Benavides Independent School District each, any, and all, every one of those months?

A. I do not.

Q. You are not saying he did not do so?

A. I am not saying he did not or did.

Q. And you do not know whether or not each, any, and all of those ten items is a legitimate salary check for services rendered in accordance with the contract between

the Benavides Independent School District and Jesus Oliveira do you?

A. I do not.

Q. On the second page of Government's Exhibit 222, it appears "Date of voucher 12-11-50, voucher No. 28519 for pipe and connections, et ceteral, date paid 12-15-50, for $105.50." You do not know whether or not on that date from the Oliyeira Hardware & Implement Company, the Benavides Independent School District purchased and received $105.50 worth of pipe and connections, do you?

A. I do not know that.

Q. They may have, as far as you know?

A. They could have.

Q. That may be a perfectly legitimate expenditure of school funds, as far as you know?

A. It could be.

Q. As a matter of fact, there were not many places of business in Benavides where you could buy pipe and fittings but the Oliveira Hardware Store?

A. Yes, the City Hardware Store.

Q. Do you know who owns it?

A. No, I don't.

Q. Then we are now on page 3 of Government's Exhibit 222, which is another series of salary checks, each for $100, commencing 6-30-51 and ending March 30, '52, isn't it?

A. That is correct.

Q. Likewise ten checks?

A. Yes, but one is for $200.

Q. You do not know whether or not each of those ten checks or eleven checks, if one was two checks in one, were for wages for services rendered by Jesus Oliveira

watching the grounds and buildings of the Benavides Independent School District or not, do you?

A. No.

Q. As far as you know, they may each, any and all and everyone be a legitimate expenditure of the funds of the Benavides Independent School District for services rendered by Jesus Oliveira, might they not?

A. It could be possible.

Q. Now, we are on the fourth page and we haven't omitted any pages, have we?

A. I didn't see any.

Q. Let's make sure. It could be possible I might have done so.

A. No, you are on the fourth page.

Q. All right. The fourth page is only one item, Page 72, 7-31-52, voucher 31362, equipment for school, paid 8-5-52 for $200?

A. That is right.

Q. That check was issued to the Oliveira Implement Company?

A. According to the annual report.

Q. You do not know whether or not on that date or prior to that date and as consideration for this voucher, equipment for the schools was purchased at the Oliveira Hardware & Implement Company in the amount of $200, do you?

A. I do not.

Q. And you are not telling this jury that check is not for a legitimate expenditure for goods, wares and merchandise delivered by the Oliveira Implement Company to the Benavides Independent School District, are you?

A. I am not telling the jury anything except that is what the records shows, the annual reports.

Q. As a matter of fact, it shows it was received, didn't it, the annual report?

A. Yes, those are all lists made in the annual report.

Q. We are on the last page, and without breaking them down, each of the eight items for tools and janitor supplies and parts, parts and tools, you do not know whether or not each of those is a legitimate expenditure for goods and wares?

A. I do not know.

Q. I see, and we have taken every item on every line, haven't we?

A. We have.

Q. I believe, Mr. Main, you told us in connection with your conversation with Mr. Jesus Oliveira, when you asked him about what he did for the schools, he told you that his home was near and overlooked the school grounds, and that he had been paid for watching those school grounds, did he not?

A. I testified to that, yes, sir.

Q. And just your recollection, your memory, did he not tell you that the reason for hiring and paying him was because of the very undependability of the state of health of Simon Elizondo, that he was an old employee who needed the money and whose family needed the money, but he was not mentally responsible and frequently was absent and his duty was to report any such absences by way of supervising Simon Elizondo's duties? Did he or not discuss any of these features with you?

A. He did not.

Q. You of course made a note and memorandum of everything he said?

A. I made a memorandum and took a statement from him.

Q. I see. Now, did Mr. Oliveira write the statement or did you write it?

A. I wrote it.

Q. And who else was present?

A. Inspector Roy H. Cauley.

Q. Did you use any recording device in the interest of precaution to see you obtained all that was said, and would not forget anything that was said?

A. No, I didn't.

Q. Do you undertake to tell this jury you wrote down, in whatever reduction to writing you made, every word, syllable uttered by Mr. Jesus Oliveira?

A. No.

Q. Then if he did say something and you did not write it down, and some two years has elapsed, you would have no way of knowing what he said, would you?

A. Except by reading the statement.

Q. And if you left it out of the statement and didn't write it down, you wouldn't know what he said, would you, Mr. Main?

A. I wouldn't if I had forgotten it. I would not have known, no.

Q. All right. Will you tell this jury when it was, by the way, what day of the week it was, if you remember, as well as you do, with reference to the time that you talked with Mr. Jesus Oliveira?

A. It was January 29, 1954.

Q. What time of day?

A. I beg your pardon, it was April, not January.

Q. April?

A. I am pretty sure it was April 29.

Q. It was either April or January and either 1954, 1955 or 1956?

A. Somewhere along in there.

Q. And do you know when it was and where that you talked to Mr. D. C. Chapa?

A. Yes, I talked to Mr. D. C. Chapa on Sunday, January 24, 1954, in the Benavides Independent School District office.

Q. And that was on a Sunday?

A. Yes, sir.

Q. You are a Seventh Day Adventist?

A. No, sir.

Q. You work on Sunday?

A. Yes, sir.

Q. You work nights, too?

A. Sometimes.

Q. Around the clock?

A. I have done it.

Q. With reference to the English language you used in connection with talking to Mr. D. C. Chapa, tell us whether or not he asked for an interpreter?

A. He did not.

Q. Nothing was said about an interpreter?

A. I don't recall any conversation concerning an interpreter because I didn't talk to him long enough.

Q. And you yourself did not offer to get him an interpreter?

A. There wasn't any occasion for an interpreter at that time.

Q. Aside from that, you did not tell him that if he wanted you to, you would get an interpreter?

A. I don't recall that.

Q. Might you have done so?

A. I would have done it if he wanted to talk to us.

Q. Is it possible, Mr. Main, you did do so with reference to D. C. Chapa?

A. I don't recall doing that.

Q. When you say you don't recall, do you mean by that you do not recall whether you did or not, or you don't recall having done so?

A. I don't recall having done so.

Q. Then I will ask you the other part of the question. Do you recall whether you did or not?

A. I don't think I did.

Q. All right. Who is Octavio Saenz in the City of Benavides?

A. I think he is mayor at this time. At that time he was depot agent.

Q. Do you know whether he is still depot agent and still mayor?

A. No, I don't.

Q. And as depot agent, do you mean a representative of the Tex-Mex Railroad?

A. Yes.

Q. And did you talk with Santiago Garcia?

A. Yes.

Q. Where?

A. I believe at a filling station.

Q. At whose filling station?

A. I think it was his. Some filling station there in town.

Q. What is his occupation? What filling station, if you recall?

A. I don't recall which one it was.

Q. He was working there?

A. He was there, as I remember.

Q. And did you talk with Jesus Garza?

A. Yes.

Q. Where?

A. At a filling station.

Q. Whose?

A. I don't know that either.

Q. Was he working there?

A. I don't know that either. We made inquiry as to where these two gentlemen were, and we went up there. We were told we could find them there and we drove up there and told them we wanted to discuss it and they said they didn't want to, and we left.

Q. Have you, before the recess—at the recess, have you refreshed your memory in any way so as to be able to tell us when it was you had the conversation with Maria Estella Hought at her home in Benavides?

A. No, I have not.

Q. Then the best you can recall is it was early in 1957?

A. I think so.

Q. It would have been January?

A. I think.

Q. As early as, would you say, a few days after the 1st of January?

A. Well, I don't know. I think it was in January, but whether it was the early part of the latter part, I don't know.

Mr. Foreman: No more questions.

8-1782 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Inspector Main, in regard to Exhibit 222, on this last page which Mr. Foreman said he didn't want to break down, I will ask you to break it down here by month and amount, those checks issued to the Oliveira Implement Company.

Mr. Foreman: May it please the Court, we object to that. The record speaks for itself. It is in the record. In the interest of time, the jury can break it down as easy as the witness.

The Court: Is it something that can be done by reading?

Mr. Wilkey: Yes.

The Court: I suggest we not spend the time on it if that is the object of your question. It is in evidence.

Mr. Wilkey: Your Honor, Mr. Foreman went into every page but this one, and I wanted to go into this one.

Mr. Foreman: I except to that remark. He said I went into every page but this one. I don't think I missed any page.

The Court: I don't know what page he is referring to.

Mr. Wilkey: The last page into which Mr. Foreman said he wouldn't break it down, but I will ask about it generally.

Mr. Foreman: I asked about each one, and the record can so show. One of us is as wrong as can be, and I would like the stenographer to see whether or not I read tools, janitor supplies, building materials—

The Court: I am not interested in proof of which is right or wrong. Do you now want to go into it in detail?

Mr. Foreman: I did go into it. It is true I didn't read the page number, the date, the number of the vouchers, but I read every item.

Mr. Wilkey: Specifically he didn't read the dates or the individual amounts.

The Court: What was the purpose of your interrogation, to read the dates and amounts?

Mr. Wilkey: Yes, sir.

The Court: I don't think that is necessary. The document is in evidence.

Mr. Wilkey: Your Honor, in that case we will content ourselves with showing it to the jury then.

The Court: Very well, sir.

Q. (By Mr. Wilkey) In regard to making records of interviews at the time you were interviewing Mr. O. P. Carrillo, Mr. Woods and Mr. Raymond were present, to your knowledge was any record of that interview made by Mr. O. P. Carrillo?

A. Yes.

Q. What kind of record?

A. They had a recording machine sitting there recording questions and answers.

Q. I see. Where was it sitting?

A. On a desk directly back of, I believe, Attorney Wood.

Q. Was that running?

A. It was running, yes.

Q. During all or part of the time you were there interrogating Mr. Carrillo?

A. As far as I know, it was in operation during the entire time we were there.

Q. Now, then, in regard to testifying in State court trials, will you tell us what is the practice and procedure of your agency, the postal inspectors, in regard to testifying in State trials?

A. We respond to requests of any official of a State court empowered to issued subpoenaes the same as any other citizen. We appear and testify.

Q. All right, sir. Have you testified in cases other than the cases involving these defendants in State courts?

A. I have.

Q. Over a period of time, of your 18 years of federal service?

A. Many times.

Q. Was there anything different from the way you testified and the process of calling you as a witness in those cases Mr. Foreman has referred to?

A. None that I know of.

Mr. Wilkey: No further questions.

8-1785 RECROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Main, did you furnish any other government witnesses, or did you have a hand in their being furnished at any of these trials, that were not postal inspectors?

A. I beg your pardon, Mr. Foreman. I don't understand your question.

Q. I direct your attention specifically to one Mr. Earl Williams, an employee of the Federal Bureau of Investigation of Washington, D. C.?

A. Yes, sir.

Q. Do you know, first, whether or not he came from Washington, D. C. at government expense, and came again and went back to testify in a State court case?

A. Mr. Foreman, I met Mr. Williams and was advised he was an examiner of questioned documents, but further than that I know nothing.

Q. You did meet him at one of the State court trials where he was there, by courtesy of the government extended to the State court prosecutor?

A. I saw him on one occasion.

Q. Where was that?

A. I believe it was at New Braunfels.

Q. With regard to the recording machine you mentioned about in your interview, where Judge Manuel Raymond was present in Mr. O. P. Carrillo's office, who was operating the recording machine?

A. That I don't know.

Q. Wasn't it Judge Manuel Raymond?

A. Judge Manuel Raymond was the one who informed us the proceedings would be and were being recorded.

Q. Well, did you see him actually operating the machine?

A. No.

Q. Do you know whether it was his or not?

A. I don't know. The microphone was on the desk.

Q. Judge Raymond was the attorney for Mr. Carrillo at that time?

A. I was so informed.

Q. Judge Raymond is now dead?

A. He is now dead. I am advised he is.

Mr. Foreman: That is all.

Mr. Wilkey: No further questions, Your Honor.

The Court: Very well, sir. You may step down.

8-1787 SIMON ELIZONDO,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

8-1787 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Simon Elizondo.
Q. And where do you live?
A. Benavides, Texas.
Q. How long have you lived in Benavides?
A. All my life.
Q. How are you employed?
A. I am the watchman for the Benavides school.
Q. How long have you been watchman at the Benavides schools?
A. A little over 19 years.
Q. And the years of 1950, 1951 and 1952, what hours were you working out of the Benavides school?
A. From four o'clock in the afternoon to either twelve o'clock midnight, one or two, or maybe a little later.
Q. Who else was working as a nightwatchman out there during those years, if anyone?
A. Do you mean the same years that you already called?
Q. Yes.

A. Nobody at that time, but when I took sick, I think they have one or two other men doing my work.

Q. All right. Now, do you have keys to the Benavides schools?

A. Yes, sir.

Q. And what do you do with the keys after you have completed your tour of duty at the Benavides schools?

A. I keep them to myself.

Q. Does anyone take over as nightwatchman at the school after you get off your shift of duty?

A. No, sir.

Q. Do you know Jesus Oliveira?

A. Yes, sir.

Q. Have you ever known him to be nightwatchman for the Benavides schools?

A. No, sir.

Q. Have you ever seen him around the schools of Benavides at night in the 19 years you have been nightwatchman?

A. No, sir.

Q. Now, you said that you—someone worked as nightwatchman when you were sick. When were you sick?

A. I took sick in October of 1954. I took sick in October, and on the 22nd of December, they took me to Galveston and they brought me home the 1st day of February in 1955.

Q. And were you well or sick prior to October, 1954?

A. I have always been in very good health except then.

Q. All right. Now, did you suffer from a mental illness at that time, in the fall and winter of 1954?

A. Yes, sir, I suffer a slight mental disturbance, as I told you before, in 1954

Q. And you say you were discharged in February of 1955?

A. Yes, they brought me home, so my daughter told me.

Mr. Foreman: What was that last sentence?

The Witness: So my daughter told me.

The Interpreter: He said, "They brought me home the 1st day of February, so my daughter told me."

Mr. Foreman: May it please the Court, we object to that as hearsay. If this witness does not know himself, the daughter would be the best source.

The Court: The objection is sustained, and the jury is instructed not to consider the answer.

Q. (By Mr. Bottler) Do you handle your own affairs now?

A. You mean my work?

Q. Yes.

A. Sure. I am in good health.

Q. Is your memory all right now?

A. Yes, sir.

Q. What happened prior to your going to the hospital in Galveston?

A. Well, how do you want me to explain it? I was sick, that is all, and they took me to Galveston.

Q. Was there anything happening to your family prior to your becoming sick?

Mr. Foreman: May it please the Court, we object to

that last question as being immaterial and irrelevant, and in the realm of conjecture, and calling for opinion from a lay witness as to a medical fact, and there is no proper predicate having been laid for the witness to express an opinion on, and we would like, if permitted, to approach the Bench to explain to the Court the pertinacity of the objection.

The Court: Perhaps it can be done without coming to the Bench.

Mr. Bottler, I don't want you to tell me what may have happened to some member of his family, but why would it be relevant?

Mr. Bottler: It accounts for his disturbed mental condition, Your Honor.

The Court: Well, I am afraid you would be getting into what would properly be covered by professional testimony. I don't know that this man can testify about his disturbed mental condition, if any he had.

Mr. Bottler: Your Honor, we think the objection goes to the weight. We are merely asking what happened.

The Court: To some member of his family?

Mr. Bottler: Yes, Your Honor.

The Court: The objection is the testimony is irrelevant, and I will sustain it.

Q. (By Mr. Bottler) Since your return from the hos-

pital in Galveston, what have you been doing?

A. I went back to the watching job on the yards.

Mr. Bottler: No further questions.

8-1792 CROSS EXAMINATION

Q. (By Mr. Foreman Mr. Elizondo, isn't it true that you are frequently absent, even now, from your employment as a watchman?

A. Well, I am not working right now when I am here.

Q. Isn't it true that the present Benavides Board of Trustees have employed a man to watch with you and watch you, to-wit: Plutarco Soliz?

Mr. Bottler: We object that it calls for a conclusion from this witness as to what was on the mind of the board of Benavides schools. We have no objection to a question about which he knows.

The Court: You may ask him if another watchman has been employed.

Mr. Foreman: If I may, I would like him to state who it is and if he knows him what he does.

The Court: Very well.

Q. (By Mr. Foreman) Do you know Plutarco Soliz?

A. Yes, sir.

Q. What does he do?

A. His work is to watch after the boys when they have dances in the school. Nothing else. That is his only job, to watch after the bad boys.

Q. You don't know whether or not he reports on you to the school board or not?

A. He has nothing to do with me. He doesn't speak to me. He only watches after the boys, and please don't try to confuse me.

Q. All right. Well, regardless of his having nothing to do with you, do you know whether or not one of his jobs is to see whether or not you are at work or not, and report it to the school board or the school superintendent?

A. I never knew that he was watching. His job is to watch the boys only.

Q. Isn't it true frequently even after twelve o'clock, or at least it has been known to happen, that boys of the Benavides high school have gone to the school and done mischief to the doors, the windows, putting animals in the auditorium, and so forth? Has it been done many times?

A. I don't—

Q. Isn't it done frequently after you leave at midnight?

Mr. Bottler: I believe the testimony has been not only as to midnight but also later. I would like to have this question set as to date.

The Court: I was thinking it would be pertinent to establish whether that was done on Halloween night or any other night.

Mr. Foreman: It was done the last time on both New Year's night and Halloween.

The Court: It was done one night at Sapulpa, Oklahoma during my time.

Q. (By Mr .Foreman) Well, has it been done at Benavides on Halloween night or any other night, Mr. Elizondo?

A. I have never seen anything like that in the time I have been watchman.

Q. If it were done, it was after you went off duty?

A. I cannot answer that question. That is too much for me to answer.

Q. Then from midnight when you leave the plant of the Benavides Independent School District until morning, there is no one there actually walking through the buildings and walking around the grounds, isn't that true?

A. I already told you, sir, that I work up to one, two, three o'clock in the morning, and I take the keys with me and I don't think anyone can walk through the schools, so please don't get me into any trouble I do not know what is going on.

Q. Is that what you said, Mr. Elizondo? Mr. Elizondo, you mean to say you took through the school at night the kids?

A. I mean the keys. K-e-y-s.

Q. If anyone wanted to enter the school after midnight, or one, two or three o'clock in the morning, he or she would have to break a window?

Mr. Bottler: Your Honor, that calls for a conclusion.

A. Well, you yourself can answer it.

Mr. Bottler: It calls for a conclusion. I think the witness already answered the question.

Q. (By Mr. Foreman) Isn't it true, Mr. Elizondo, that contrary to the question as to your seeing Jesus Oliveira at night, isn't it true you saw him almost every night? Wait a

minute, let me finish the question—at or about 5:00 or 6:00 p.m., when he would come home?

Mr. Bottler: Your Honor, we object to the question because he said contrary to what you testified in response to the prosecution's question "Have you ever seen Jesus Oliveira at night." The question which has been asked of this witness, and I don't think he should be confused, was, "Have you seen Jesus Oliveira around the school grounds at night during the 19 years you have been a watchman," and I believe that five o'clock or six o'clock in the afternoon is certainly not at night.

The Court: Isn't your objection argumentative?

Mr. Foreman: May it please the Court, I think that—I appreciate the earnest desire of the prosecution to assist the defense in this case, but I think we should be permitted to ask questions and fix times, and not have objections stated in on how the prosecution thinks the question ought to be asked. My next question will be when and how, but my first question is did you.

The Court: I will overrule the objection and let the witness answer.

Q. (By Mr. Foreman) Didn't you, almost every night, see Jesus Oliveira, this defendant at the end of the table, as he would come home around five or six o'clock in the evening?

A. No, sir. I have seen him going by in the street or at his home, but never trying to watch the school.

Q. Well, I will accept that. Tell us how often you would

see him, whether or not you would see him practically seven days a week? Did you work seven days a week?

A. All the time. I have permanent work. Mr. Oliveira has never had anything to do with the watching job. I saw him going by on the way to his home.

Q. Then my first question just ahead of this line that I shall ask you in a minute is, did you work seven days a week?

A. I work every day in the week from Monday, Sunday, every day. They pay me for the whole month, and I work every day in the month.

Q. Did you, on Sunday, work the same hours that you did on a weekday?

A. All the time is the same.

Q. And likewise through the summer, the same as in the school year?

A. All the time is the same. I have never recessed or vacationed.

Q. Is there anybody, Mr. Elizondo, that you see any more often about the premises where you work, or while you are on the premises that you work any more than you do Jesus Oliveira?

A. I don't know anything about that. I just see him go by occasionally. That is all.

Q. What was the answer, please, ma'am?

A. I don't know anything about that. I just see him go by occasionally.

Q. Well, my question has to do with how often as compared with anyone else. Is there anyone else you see go by any oftener than Jesus Oliveira?

Mr. Bottler: Your Honor, that is irrelevant and immaterial, and we object to it.

Mr. Foreman: May it please the Court, it is the contention of the defendants in this case, and Mr. Oliveira, that his job was to watch this man. I shall, if permitted to do so, establish that he did so, but this man and his opportunities to do so are now what are under search.

The Court: Objection overruled.

A. Well, it is a public street. Anyone can go by, so I don't keep account of how many times he go by or someone else. I am attending to my work. A street goes by and I am not watching the people that go by.

Q. Where is Mr. Oliveira's residence with reference to the school grounds of the Benavides Independent School District at Benavides?

A. He has a house right across from the school. His place has three entrances so I have a chance to see him as I am doing my work, and I don't care to be watching him to see how many times he goes in or out of his house.

Q. I didn't get the first of the sentence, something about entrances.

The Interpreter: He says, "His house has three entrances, his place, his residence." He says, "He can go from one way or the other, and I cannot keep watching him because I am doing my work."

Q. Isn't it true from each of the three entrances of his house he can see portions of the school properties?

A. If he wanted to, yes. He has eyes. And if he has nothing to do than to pretend to be looking at me, you couldn't stop him, I couldn't, but I do not know.

Q. Isn't it true his house is within hearing distance of glass is broken in the school grounds in the main building?

A. Well, I don't know how fine his hearing is, but it looks to me like I would hear it first because I am on the job.

Q. But if it happens after midnight, or one or two or three o'clock in the morning, you would be how many blocks or miles away, Mr. Elizondo?

A. After I leave that place at one, two or three o'clock in the morning, I couldn't tell you what he hears. You can ask him that question.

Q. How far do you live from where you work? How far is your work from the grounds of the Benavides Independent School District at Benavides?

A. Oh, about two blocks.

Q. Two blocks. Now, with reference to your mental illness and your expression "so my daughter told me," you testified in this case last November or December, did you not, Mr. Elizondo?

A. Yes.

Q. Did you not tell us that you did not know how many days, weeks, months, or even years you remained in a mental hospital in Galveston?

A. I remember that your questions were very sharp and you made me cry at the time, I was so full of emotion. I don't even remember what I answer you then.

Q. Regardless of that, except for what your daughter told you as to dates, you did not know how long it was you remained, or even what years it was you were at Galveston, did you?

A. Now that I feel I am in good health and my head is working, I can tell you when I was, but probably last year I told you something else. I don't remember what I did.

Q. You mean last year in November and December when you testified, that your head was not working?

A. I am going to explain to you, sir, that the way the questions were asked by you got me all upset, and I didn't know how to answer because I started to think of all the family trouble I had had when I lost my mind.

Q. Did you or not lose your memory while you were on the witness stand last time?

A. I have no reason to lose it, only I could not answer you.

Q. Then your head was working, to use your expression?

A. All this time since they released me from the hospital, I have no reason to complain.

Q. Well, were you in possession of your mental faculties when you testified in this former trial of this case?

A. Yes.

Q. Then did you or not testify that you did not know even as to years how long you remained in Galveston in the mental hospital?

A. The questions that you asked me last year were trying to make me tell you I was not in my right mind, and instead of denying you, you made me cry.

The Court: Mr. Foreman, are you near the end of your interrogation?

Mr. Foreman: I am afraid not, Your Honor. I want to get a copy of that testimony, if it is available.

The Court: Very well. It is now five minutes to five, and we will adjourn until tomorrow morning. Before adjournment, I want to announce to the jury, and all others present, that the Court has other matters set for Friday afternoon

so we will work on this case until noon Friday and we will at that time adjourn for this week at noon Friday.

The jury is reminded of the instructions previously given, and court is adjourned until 9:30 tomorrow morning.

8-1803 MORNING SESSION—JUNE 4, 1957

SIMON ELIZONDO,

being the witness who was on the stand at the time court recessed on June 3, 1957, resumed the stand at this time and continued his testimony as follows:

8-1803 CROSS EXAMINATION (CONTINUED)

Mr. Foreman: Shall we proceed, Your Honor?

The Court: Yes, sir.

Q. (By Mr. Foreman) Mr. Elizondo, what is the daughter's name who told you when you came back from Galveston?

A. Elisa.

Q. Is her last name Elizondo, or is she married?

A. She is married to Antonio Carrillo, but she is separated from the husband.

Q. Is she here in Houston now?

A. No, she is in Benavides.

Q. And when was it she told you when you came back? When did she advise you or explain to you or inform you as to the date of your returning from the mental hospital in Galveston?

A. When I had been in the hospital about three days, I brought again my memory and I asked, "Where am I?" and she said, "You are in a hospital."

Q. That is not my question. My question is when was it?

A. Well, since they brought me home, I started talking to my daughter and to the other one, whose name is Leonila.

Q. Was it not after you were on the witness stand here in Houston last November that your daughter advised you of the date as to the year and month and day you returned from Galveston?

A. I hardly know what you want me to answer. When I came home and I started talking to my dughter, that is the time the doctors wrote I was all right. Naturally she informed me how long I had been and so on and so forth.

Q. Did you not tell us last November that you did not know as to the year, day, or how long you went to or returned from Galveston?

A. When you asked me those questions last year, it was soon after—

Mr. Foreman: May it please the Court, this is not responsive. He is answering why he testified in such a manner, and he has done it three times. I am asking that he only answer my question, and that the interpreter advise him he only answer my question.

The Court: I want you to instruct the witness that his answers should be responsive. Tell him that. Does he understand what that means?

The Interpreter: He says he understands it.

The Court: Now also tell him that by that I mean that when a question is asked, that he directly answer that question and not volunteer any other information.

The Interpreter: All right, Your Honor.

(Conversation between the interpreter and the witness.)

Yes, Your Honor. He says he understands.

Mr. Wilkey: Your Honor, I ask that the witness be allowed to answer that last question because in my opinion the answer was going to be very responsive. I think I know what he was going to say, and I want him to answer.

The Court: Go back and read the last question.

Mr. Foreman: May I submit, the answer he assumes he is going to make—

The Court: I am not going to conjecture on what anyone is going to answer. I want the last question read, and I want the witness to answer without volunteering anything further.

The Interpreter: May I explain to him, Your Honor?

The Court: We want the question answered, and we don't want him to volunteer anything not asked in the question.

(Short converstion between interpreter and witness.)

The Court: Very well. Now, go back and read the question.

The Official Reporter (Reading): "Question: Did you not tell us last November that you did not know as to the year, day, or how long you went to or returned from Galveston?"

A. I believe I said that.

Q. Now, did you talk with either of your daughters after your testimony—about your testimony after you testified last November?

A. No, sir.

The Interpreter: I told him to say no instead of shaking his head.

Q. You do have, right down to the date, the month and the year as to everything that happened in Galveston from the time you entered and the time you were released, at this trial, do you not?

Mr. Bottler: May I have that question again. I missed it.

The Official Reporter (Reading): "Question: You do have, right down to the date, the month and the year as to everything that happened in Galveston from the time you entered and the time you were released, at this trial, do you not?"

A. Yes, sir.

Q. Have you talked with either Mr. Wilkey or Mr. Bottler, the prosecuting attorneys, since you testified last November?

A. I have not talked with either of these two gentlemen those things. I have talked to them, though.

Q. Have they talked with you about your testimony in this case since last November?

A. No, sir.

Q. Do you know why Mr. Wilkey would know what your answer was going to be to a given question?

Mr. Bottler: Your Honor, that would call for a conclusion on this witness' part as to what method of thinking Mr. Wilkey—

The Court: I think it would be testimony developing the testimony. The man has said he did talk to prosecuting attorneys, but not about his testimony in this case. Mr. Wilkey a few minutes ago said that he thought he knew what the answer would be, and I think the defense has a right to explore that. Objection overruled.

The Interpreter: May I repeat it? He seems to be—

(Short conversation between interpreter and witness.)

A. Well, I think last year and in between times from last year to now, I have given the information to these gentlemen, as I have given it to you before.

Q. To what gentlemen?

A. I mean these gentlemen at the table.

Q. You mean Mr. Malcolm Wilkey here, and Mr. Edgar Bottler here?

(Mr. Wilkey and Mr. Bottler rose.)

A. Those gentlemen that are standing.

The Court: Those are the ones you asked about?

Mr. Foreman: Yes, Your Honor, but he said those gentlemen at the table, and we are all at the table.

The Interpreter: Well, he wants to be polite, that is all.

Q. You say you have done that from time to time since last November?

A. The last time, which is during this trial, that I have been ordered to come here, that is when I talked to that gentleman.

Q. And how many times since you have been here at this trial, Mr. Elizondo, have you talked to Mr. Edgar Bottler about your testimony?

A. Once, and this. I call it twice.

Q. Then have you been advised by anyone since your testimony last November to answer my questions concerning that testimony by explaining your mental condition?

A. No, sir. I have not discussed that with anybody.

Mr. Foreman: That is all, Your Honor.

8-1809 REDIRECT EXAMINATION

Q. (By Mr. Bottler) During your examination last fall, did you testify as to the length of time that you were in the hospital at Galveston?

A. Yes, sir.

Q. And how long did you testify on that occasion that you had been in Galveston?

A. Well, I testified that I went to the hospital on December 22. Do you mean—do you want to know when they brought me back?

Q. No. Just the length of time.

A. Just one month.

Q. Now, when you stated in your examination last year—strike that.

During what part of the examination, when Mr. Foreman was questioning you about your hospital stay last year, in the former trial of this case—what happened?

Mr. Foreman: May it please the Court, the witness has four times, or three times, without even being asked that question, volunteered it that he commenced crying and lost his memory. He stated that fully before. It is in this record, and he is asking it again now when it is immaterial and irrelevant.

Mr. Wilkey: It is very material to the question about his memory for dates then and his memory for dates now.

The Court: Mr. Bottler asked the question what happened. Is the answer you expect that he cried?

Mr. Bottler: I expect he will testify that he was filled with emotion

The Court: He has testified that.

Mr. Bottler: That is correct.

The Court: I will sustain the objection, if that is the purpose of the question.

Mr.Bottler: All right. No further questions.

Mr. Foreman: No further questions.

8-1810 R. R. GONZALES,

a witness formerly called in behalf of the Government herein, was recalled, reminded he was still under oath, and testified further as follows, to-wit:

8-1811 DIRECT EXAMINATION

Q. (By Mr. Wilkey) You have been sworn, have you not?

A. Yes.

Q. You are the same R. R. Gonzales who testified here in the week of May 13th?

A. Yes, sir.

Q. All right, sir. Since your last appearance on the stand, Mr. Gonzales, have you made a further search of the records of the Benavides Independent School District in the School District office of Benavides?

A. I have.

Q. If you will give attention to my questions now, we will get to that in a minute, sir.

When did you make this search?

A. May 18.

Q. Was anyone with you?

A. Yes, sir. Inspector McMillan and Inspector Goad.

Q. Please describe exactly how you went about making the search of the records there in the School District office there in Benavides?

A. Well, sir, we went into the vault, to begin with, and we searched every shelf in the vault, even numbered the shelves 1, 2, 3 and 4, and then started again, 4, 5 and 6, and searched all round the vault, and then we had some records in the middle, and we checked them too.

Q. Records in the middle of the vault?

A. Yes, sir. And then we went to the next room and checked into the safe, and checked every part of it.

Q. All right.

A. And those are the only two offices that have any records. The other is my personal office, and there is nothing there, no old records.

Q. Is there any place in that School District office, which contains School District records, which you did not check?

A. No, sir. We checked everything.

Q. How long did it take?

A. It took a little over six hours.

Q. All right, sir. Now, then, at the time you began your examination of the documents there in the School District office, did you have a list with you of certain documents you were particularly looking for?

Mr. Foreman: May it please the Court, we object to that. It is calling for hearsay, it is prejudicial, a list evidently prepared by the prosecution, and therefore it was out of the presence and hearing of each of these defendants as to this particular list. We will have an objection to the fruits of the search, whenever we get to the point of that search, but as to what he had with him, what someone had given him, he wouldn't have been permitted, if a subpoena had been issued for it, to testify what he looked for, and now this is ex parte, unilateral—

The Court: What says the Government?

Mr. Wilkey: Your Honor, I think we have a right to show what the man was looking for. That is certainly pertinent and relevant to any inquiry in this case, and a list is very tangible evidence of what he looked for. If counsel wishes, he can testify orally as to what he was looking for.

Mr. Foreman: I don't admit he has a right to call for anything. If he testified orally, he would be subject to the same objection.

The Court: Well, if he is looking for something, that is a material fact. I will permit the witness to tell us what he was looking for and what he found or what he didn't find after a search.

Mr. Foreman: At this time, Your Honor, I would like to interpose the other part of the objection, and that is as to what he may have found in May of 1957, when three or four intervening collectors, tax collectors, and no evidence as to how much change in personnel has been in the offices of the Benavides Independent School District tax office, would not be material or of evdentiary value as to what was there at the time of the departure of any one of these defendants, and we interpose as to each and all the defendants that it is hearsay. If the Government intends it should be as to any one defendant or defendants, or any count or counts, we respectfully request they be required to stipulate the purpose of its being introduced, and as to which defendants and which counts they claim it is admissible, reserving our objection to it again as immaterial and of no evidentiary

value in view of the change of personnel and the lapse of time.

The Court: Defendants interpose a number of objections. One states hearsay. I want to be sure I understand the objection. This man's testimony is that he is the tax collector of the Benavides Independent School District, and if he is, in his official capacity he is charged with the records of that office. I do not believe his testimony of what is in his office or what is not would be hearsay. I want to be sure I understand you.

Mr. Foreman: May it please the Court, as to what he was looking for or what somebody asked him to look for, it would be hearsay. It would be testimony based on hearsay.

The Court: It is immaterial what someone asked him to look for. My ruling was he can state what he was looking for and what he found, or what he did not find after such a search.

Mr. Foreman: We want to have part of our objection interpose the further objection that there is no showing of a continuity of conditions, and the records in the case show that there couldn't be any such showing in view of the fact that there were—

The Court: Intervening tax collectors. I think that goes to the weight, and whatever may have been found or what may not have been found, the testimony in itself would not say who would be responsible for its presence or its ab-

sence, but I will permit the testimony and the objection is overruled.

Q. (By Mr. Wilkey) Mr. Gonzales, directing your attention to the last question that I asked you, what was the first item on the list that you were looking for?

A. Original canceled checks for the years 1949 through February, 1954.

Q. And what did you find?

Mr. Foreman: May it please the Court, did the Court rule he could introduce this list and read from the list in answer to the question?

The Court: The Court ruled he could testify what he was looking for and what he found or what he did not find after such a search. The Court also ruled it is immaterial why he was looking for it. What we want to know is what he was looking for and what he found or did not find. He has stated the existence of a list when he made his search, and if it is the same list, he may refer to it now.

Mr. Foreman: Well, we are objecting to the manner of testifying from the list, the list being referred to.

The Court: Objecton overruled.

Q. (By Mr. Wilkey) What was that first item again?

A. Original canceled checks for the years 1949 through February, 1954.

Q. What did you find?

A. We found some orignal canceled checks.

Q. Would you produce those which you found?

A. Yes.

Q. If you will, Mr. Gonzales, you may leave the witness stand and put this out on the table here, and the original canceled checks that you found.

(Witness complies with counsel's request.)

Are these the original canceled checks, or carbons?

A. They are carbon copies of checks.

Q. I haven't asked about those yet. I believe there are some original canceled checks, and if you will take those out? I will approach those since those are the first items on the list. Will you put those items, the original canceled checks—will you put those down here? What is the next item on your list?

A. Bank statements.

Mr. Foreman: Wait a minute. Mr. Wilkey, let me follow you here. Are the original canceled checks here (indicating)?

Mr. Wilkey: No, they are down here (indicating). We are going to start at this end and go from left to right.

Mr. Foreman: Is that what these are (indicating)?

Mr. Wilkey: That is those.

The Court: Going from north to south. From where I am sitting, that is right to left.

Mr. Wilkey: Yes, Your Honor, north to south, so it may be clear in the record.

The next item on your list I believe is what?
A. Carbon copies of checks.
Q. No, the second time?
A. Bank statements.
Q. Are those the bank statements here?
A. Yes, those are.

Mr. Foreman: May it please the Court, now at this late date we object to the testimony being brought in here and proved with reference to another and different account of the San Diego State Bank, the Freer High School account signed by W. L. Reed, Superintendent, and the proof of the existence of that account because we relied upon the indictment and our cross examination of the officers of the San Diego State Bank, Mr. Jose Lopez, and he has already testified and has been excused, and not one word from him as to this account was introduced by the prosecution, and we now are getting into the evidence, batches of checks, about an account of which we had no knowledge, Judge, up to now, I may say to the Court, in either this or the other case. It has never been referred to or its existence proved, and therefore the defense is in the position of having to meet evidence initially with the bulk of the Government's case already closed and the witnesses gone and not available here for cross. It is unfair, not intentionally unfair, but nevertheless permitted to be brought in here. This account could conceivably explain every check that has been cashed at the San Diego State Bank because here is the Government's witness, W. Franklin Reed, principal of the Freer school, writing checks on another and different account that has never been proved or sug-

gested by indictment or testimony of any government witnesses, and it leaves—it could be the point at which a lay jury, not knowing the—but what we had this information before, would have expected us to be prepared to meet and refute or explain by the cross examination of the Government's witnesses, and for that reason we are objecting to this going— being brought in, both being brought in at all because of no precedent, and being brought at this time in a way and a time calculated that the defense would be severely handicapped, and may I say to the Court it is the first time in these cases I ever knew of any such account or anybody ever testifying to any such account in here.

We are surprised and we were not advised, and are not prepared to proceed with the proper defense of this case if we are required at this late date and hour to meet and explain alleged incriminating evidence, and it shouldn't be offered.

The Court: You say this late date. The trial is still open.

Mr. Foreman: It is still open, but we announced ready based on the case as it had been presented up to that time, and you can't get ready for the trial of a case during the case when you are committed to the trial during the day and at night to the regular work.

The Court: I think you are committed to relevant evidence that the defense is charged in the indictment. I don't understand the objection because you have been speaking from some documents you hold in your hand, and I do not know what they are.

Mr. Wilkey: May I answer the objection?

The Court: Yes.

Mr. Wilkey: Defense counsel has wasted four minutes by the clock making this objection.

The Court: I want to dispense with comments like that. He is entitled if it takes forty minutes.

Mr. Wilkey: He objects to something that has not been offered and have no intention of being offered. He is referring to a small petty cash account of the--

Mr. Foreman: We object to the unsworn testimony of prosecuting attorney.

The Court: This is not testimony at all, and I will instruct the jury it is not testimony and neither is the objection of Mr. Foreman testimony. They are arguments to the Court on the admissibility of evidence.

Mr. Wilkey: We agree with Mr. Foreman that the checks there on this petty cash account of the Freer District have no concern with this indictment. That is why they haven't been brought up before, but they do come under the description of all canceled checks for the years.

The Court: In his possession?

Mr. Wilkey: For the years 1949.

The Court: The United States Attorney has stated he does not intend to offer them, so it would be out of order

for the Court to consider it. You object to the offer, so at this time I will not consider the objection.

Mr. Foreman: May it please the Court, it is before the jury. They have seen them, and whether they are offered as actual exhibits or not—

The Court: They have seen them at a distance in your hand and my hand, and I don't think there is a one of them can read a bundle of checks they have seen in your hand and mine. You may continue with the examination.

Mr. Wilkey: In order to save time, I will announce what I intend to do.

Mr. Foreman: If he is going to announce it, I request he do it out of the hearing of the jury.

The Court: He doesn't need to announce it. You may continue with your examination of the witness.

Q. (By Mr. Wilkey) In regard to Item 2, I believe they are the bank statements, on the corner there. What is your next item?

A. Carbon copies of checks for 1949 through 1954.

Q. Let's move on. Carbon copies of checks for the dates 1949 through 1954, next in line.

Now, on those carbon copies of checks, I see here four checks to George Carrillo, and Eloy Carrillo, dated January 31, 1953 and February 28, 1953. Who are George Carrillo and Eloy Carrillo?

Mr. Foreman: May it be understood our original objection as to the remoteness and hearsay, and as to each sep-

arate defendant and as to the lack of authenticity or continuity goes to all of these with reference to any of these exhibits that are offered from this witness.

The Court: It is the opinion of the Court that the objection goes to the weight of the evidence, and the objection is overruled.

Q. (By Mr. Wilkey) You may answer, sir.

A. George Carrillo and Eloy Carrillo, I think, are nephews of Mr. D. C. Chapa.

Q. Are they employed, or were they employed in 1953 by the School District?

A. It was my understanding that they were assistants of the band director.

Q. What size band does Benavides have?

A. I imagine it is about 40 or 50 children.

Q. Forty or 50 children, and how old are George and Eloy Carrillo?

A. Those boys must be, George and Eloy must be around 35 or 38.

Q. What do they do in the band?

A. They assist the band director to teach the kids music.

Q. Who is the band director?

A. Petacio Rivera.

Q. I see checks to Mrs. R. G. Ramirez dated January 31, 1953; Celia Ramirez, January 31, 1953; Mrs. Rogelio Ramirez, February 28, 1953; Celia Ramirez, February 28, 1953; Mrs. R. G. Ramirez, January 16, 1954; Mrs. R. G. Ramirez, no date on this one. Oh, January 31, 1954. Celia Ramirez, January 31, 1954; Mrs. R. G. Ramirez, February 27, 1954; Mrs. Celia Ramirez, February 27, 1954. Who are Mrs. Celia Ramirez and Mrs. R. G. Ramirez?

A. Mrs. Ramirez is Mr. D. C. Chapa's daughter.

The Court: Don't you think it would be better if the witness takes his seat? I think the jury will be better able to hear him.

A. Mrs. R. G. Ramirez is Mr. D. C. Chapa's daughter.
Q. Who is Celia Ramirez?
A. The same person.
Q. Who is Mrs. Rogelio Ramirez?
A. The same person, as far as I know.
Q. May I have those? Will you remove those?
What is the next item on your list?
A. Tax rolls for 1952 and 1953.
Q. Did you find any tax rolls for 1952 and 1953 other than those which you have already brought here?
A. No, sir.
Q. What is the next?
A. An alphabetical list for 1953 supplied by Thomas Y. Pickett.
Q. Did you find it?
A. Yes, sir. We found it in an old box.

(Documents tendered to the Clerk and marked Government's Exhibits 223, 224 and 225.)

Q. May I have that?
What is the next item on your list?
A. All original invoices, bills, and statements of accounts of any and all concerns showing materials or services rendered to the Benavides Independent School District.
Q. What did you find of those?

A. We found these old bills.
Q. Are those the material right there?
A. Yes, sir, that is the material right there.
Q. Are those some of the old bills?
A. Yes, sir.
Q. Do you have any other items on your list there?
A. No, sir, that is all.
Q. Now, then, with reference to the items on the list there which you looked for, are there any other items called for on that list in the Benavides Independent School District which you have not produced in court here?
A. No, sir.

Mr. Wilkey: I must wait until he finishes marking these, Your Honor, to continue the examination.

The Court: Will it take long, Mr. Anderson?

The Clerk: It will if I mark each one. I can mark the envelope and go through them later.

Mr. Wilkey: I think it can be marked later. We will mark the envelopes.

Mr. Foreman: May it please the Court, I may want to refer to different items on cross. I have no idea what they are, and it would be easier to mark them now than to stop and have the stenographer mark them.

Mr. Wilkey: I can proceed with a little of the examination now on those.

The Court: Very well. I suggest that that be done.

Q. (By Mr. Wilkey) You may put that list away, and I show you Government's Exhibit 225 and ask you what this is?

A. This is a list in alphabetical order of the taxpayers of the Benavides Independent School District for the year 1953.

Q. The year 1953? Does that show both the rendered and the unrendered property?

A. Yes.

Mr. Wilkey: Your Honor, we offer in evidence at this time Government's Exhibit 225, being an alphabetical list of taxpayers for the year 1953.

Mr. Foreman: May it please the Court, if it is what he says it is, it isn't what it says it is. It doesn't say that that is what it is except by the statement of the witness and by the prosecuting attorney, and we would like for the Court to examine it before making any further examination.

Mr. Wilkey: Your Honor will recall that an exact list—

Mr. Foreman: Let me finish, please, Mr. Wilkey.

Mr. Wilkey: I am sorry. I didn't realize you were speaking.

Mr. Foreman: It is unauthenticated, a carbon copy of something or other, and it is a conclusion of this witness as to what it is, or the prosecuting attorney unless—or it is hearsay because the instrument itself would be the best evidence of whatever it is, and I don't see "alphabetical

list of taxpayers" there, and whatever it is, it calls for authentication and has not been authenticated, and we object to it for that reason, and as hearsay, and make the objection as to each and all of the defendants.

The Court: The Court concludes that it is an alphabetical list. What does the Government say about authentication?

Mr. Wilkey: Your Honor will recall Government's Exhibit 210 was admitted in evidence as an alphabetical list of taxpayers for the year 1952 by the testimony of Mr. Gonzales when he was here previously. This is the same list for the year 1953. Mr. Gonzales says it is a list of taxpayers, and he is familiar, I think, with the records of his office. The testimony is that this is a list found after a search. My understanding is he wasn't familiar with it before he found it.

May I ask a question or two of the witness on that?

The Court: Yes. There is one other thing, Mr. Foreman has pointed out it is a carbon copy. I think you should establish, if it can be established, if the original typed copy of which this appears to be a carbon, if it has been found or if it is in his possession. I suggest you continue.

Q. (By Mr. Wilkey) Mr. Gonzales, do you have any knowledge of the whereabouts of the original typed copy of this alphabetical list?

A. I do not.

Q. Now, then, in your work there, did you ever have an occasion to refer to or use similar alphabetical lists of taxpayers?

A. We get a copy from Mr. Pickett every year.

Q. Has that been true since you have been in the tax collector's office?

A. Yes.

Mr. Foreman: May I ask a question or two?

The Court: Very well.

8-1829 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Did you ever see this list that His Honor is examining, and which is marked as Government's Exhibit 225, until you found it somewhere in the recesses of the offices of the Benavides Independent School District?

A. Not this 1953, no, sir.

Q. Did you ever have occasion to refer to it at any time since you have been there?

A. No, sir.

Q. You didn't know it was there until somebody found it? Who found it?

A. All three of us were making that search, and I don't remember which one of us picked it up, but we found it.

Q. Was it you?

A. I don't remember, Mr. Foreman, whether it was me or one of the inspectors.

Q. All you understand, when you undertake to say it is an alphabetical list of taxpayers for the year 1953, is simply you mean that it looks to be similar to such as have been furnished you since you have been there?

A. That is correct. We get one every year.

Q. You are not testifying to its being the actual list or being an authentic list or authenticating anything it is purporting to represent by your testimony?

A. I would think that is a copy of the original, but that is all.

Q. You only know that or think that from the fact that it looks like some you have had?

A. Yes.

Q. As to its being accurate, you do not know one way or the other?

A. That is true.

Q. As to whether it was prepared, discarded, and something else prepared in its place—

A. I was not there in 1953, so I couldn't know.

Q. You couldn't know any of those facts. That is all.

The Court: Government's Exhibit 225 is admitted as a record—a list found by Mr. Gonzales, the tax collector, in his office. He has stated that he does not have the original typed copy. I will suggest that it may be in the office of Thomas Y. [illegible]ckett & Company, and that inquiry can be made there.

Mr. Foreman: We ask that this exhibit, Exhibit 225, be limited as to such defendants and such counts as the Government contends it is offered.

Mr. Wilkey: It is offered as against all defendants as to all counts in relation to the general scheme to defraud on the first 19 counts, and conspiracy on Count 20, the same as Exhibit 210 previously admitted on that basis.

The Court: So admitted.

Mr. Foreman: We think it should be admitted to D. C. Chapa only.

The Court: Objection overruled.

8-1831 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Wilkey) Mr. Gonzales, I hand you what has been identified as Government's Exhibit 226, being an envelope here, and ask you if you can identify that envelope and the contents thereof?

A. This is a bill dated April 30, 1953, to the Benavides Independent School District in account with A. Caballero, bills attached.

Q. You need not read all of them. Are they part of the records there of your office which you found?

A. Yes, this we found.

Q. With the bill, they are what?

A. Two bills.

Q. Dated what?

A. April 18 and April 21, 1953.

Q. And signed by whom?

A. Oscar Carrillo, and the other one is not signed. It says Oscar Carrillo, but it is not signed.

Q. It says Oscar Carrillo at the top, but not signed at the bottom like the first one?

A. That is correct.

Q. If you will put those back in the envelope, I will ask you about another one here. I show you Government's Exhibit 227 and ask you what that is?

A. Benavides Independent School District for local maintenance, date June 12, 1953.

Q. All right, and the other item in the envelope?

A. The other item is a blank check, and on the back it

says, "Deposit, Benavides Local Maintenance." It says L. M. I guess that is what it means. It says "Oscar."

Q. Are those and the envelope with "Tom" written on it part of the records you found in your office?

A. Yes.

Q. Put those back and give them to Mr. Foreman for his examination.

(Witness complies with counsel's request.)

I show you what has been identified as Government's Exhibit 228, and ask you what that envelope and its contents are?

A. San Diego Lumber & Hardware Company, J. Tovar, Manager, and a bill for $28.15.

Q. What is the date of the bill?

A. February, 1953. It doesn't have a date, just February, 1953.

Q. To whom was it sent?

A. The Benavides Independent School District in care of D. C. Chapa, tax collector.

Q. What is the amount?

A. $28.15.

Q. Put that in the envelope and give it to Mr. Foreman for his examination.

(Witness complies with counsel's request.)

I show you Government's Exhibit 229, and ask you what that is?

A. That is a proposed budget for the year 1952 and 1953, the school year.

Q. Do you know what it covers, or what part of the school it covers?

A. Apparently—

Q. That is all right. That would be a conclusion. I withdraw the question. The document will speak for itself.

Now, then, I hand you Government's Exhibit 223-(1) 223-(2), 223-(3), 223-(4) and ask you to identify those for the record, just what they are?

A. This one is a carbon copy of a check issued to George Carrillo for $166.66 , dated January 31, 1953.

Q. Without reading the details of the check, just the body, will you identify Government's Exhibit 223-(2)?

A. A check payable to Eloy Carrillo.

Q. 223-(3)?

A. A check payable to George Carrillo, the carbon copy of a check.

Q. 223-(4)?

A. Eloy Carrillo.

Q. Eloy, spelled E-l-o-y?

A. Right.

Q. And Government's Exhibit 224-(1), 224-(2), 224-(3), 224-(4), 224-(5), 224-(6), and there is another (6), and (7) and (8)?

A. Two (6's), (6)(A) and (6)(B).

Q. What is 224-(1)?

A. The carbon copy of a check payable to Mrs. R. G. Ramirez.

Q. 224-(2)?

A. Carbon copy of a check payable to Celia Ramirez. Exhibit 224-(3) is Mrs. Rogelio Ramirez.

Q. Are those three different persons or the same person?

A. I think the same person.

A check payable to Celia Ramirez.

Q. That is 224-(4)?

A. And 224-(5) is Mrs. R. G. Ramirez. And Mrs. R. G. Ramirez is 224-(6)(A).

Q. And what is 224-(6)(B)?

A. Celia Ramirez.

Q. 224-(7)?

A. Mrs. R. G. Ramirez.

Q. 224-(8)?

A. Mrs. Celia Ramirez.

Mr. Wilkey: The Government offers in evidence Government's Exhibits 223, 224, 226, 227, 228 and 229, all of which Mr. Foreman holds in his hand right now.

The Court: Are there objections?

Mr. Foreman: Let me say this, Your Honor, some of them we don't have any objection to. May we ask for what purpose, as to what defendants and what counts, they are offered?

Mr. Wilkey: They are offered on the general conspiracy Count 20 and on the scheme to defraud, Counts 1 to 19, as against all defendants as showing various allegations of the indictment in regard to the scheme to defraud and the intent to divert part of the funds of the School District for the benefit of the defendants, their relatives, supporters and associates.

Mr. Foreman: We object as to 223.

The Court: I suggest we take them separately. I will hear your objection to 223.

Mr. Foreman: On the ground that it does not appear or show by whom these originals of these four duplicates, if there were originals, were signed. They appear to be carbon copies, and the best evidence rule has not been met so as to authorize the introduction of a copy in lieu of an original. They have not been properly authenticated, or a proper predicate laid for their admission, and they are not germane to the conspiracy alleged in the indictment. There is no count in the indictment mentioning either Eloy Carrillo or George Carrillo. They are prejudicial, inflammatory in that without any proof to that effect, the mere fact that they were established to be nephews or related to D. C. Chapa is offered for the purpose of inflaming the jury and suggesting to the jury that the work was not done for the work for which the voucher issued whereas this witness testified they were employed and did the work with the music department of the school, or the band of the school, and for each of these we object, first as to all of the defendants, and then we ask that it be excluded to all of them, including D. C. Chapa, and if, Your Honor, we are overruled in that, that it be limited to D. C. Chapa.

The Court: May I see the exhibit, please?

(Tendered to the Court.)

These appear to be copies of check vouchers. I believe the witness testified he found them among the records of his office. Was the absence of the original checks explained?

Mr. Wilkey: Yes, Your Honor. The absence of the original canceled checks has been explained by this witness, and also the absence of the microfilm of the bank which would have been photographed, photographic evidence.

Mr. Foreman: That is gratuitous argument of the prosecuting attorney.

The Court: I believe it is responsive. I need to have some of these things recalled to me. Would you rather we hear these arguments on admissibility out of the presence of the jury?

Mr. Foreman: It doesn't matter to me, Your Honor.

The Court: Yes.

Mr. Foreman: The Court hasn't asked anything about microfilm. The Court asked about the originals of these records, and microfilm is not an original, and that is what I objected to. It was not the first part of his observation.

The Court: Government's Exhibits 223-(1), (2), (3) and (4) are admitted in evidence. Objection overruled. It is now—I am going to suggest recess. It is now 10:35, and I don't think we need burden the jury with all the arguments on admissibility, so I will declare a recess of about 15 minutes, and the jury will be excused for 20 minutes and we will dispose of these matters of admissibility out of the hearing of the jury.

Is there any objection to that procedure?

Mr. Foreman: None whatever, Your Honor.

The Court: Very well. The Court and counsel will take a recess of about 15 minutes, and the jury may stand at ease for 20 minutes, and at that time report to the jury room.

(Short recess.)

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: Be seated, please. Very well. We will move to Government's Exhibit 224.

Mr. Foreman: May it please the Court, if we substituted the name Mrs. R. G. Ramirez, who has been identified also as Celia Ramirez and, I think Rogelio Ramirez, for the Eloy and George Carrillo in 223, my objection would be the same. Does the Court think I should repeat it?

The Court: On 223?

Mr. Foreman: This is 224. We finished 223 in the presence of the jury.

The Court: I understood you to say 223.

Mr. Foreman: 224. I mean if I substituted in my objection to 224, and that being nine checks issued to the same person but under the initials R. G., which is Rogelio G., and Celia, which is her maiden name, she being the daughter and these others being nephews of D. C. Chapa.

The Court: You are speaking now of your objection. Then your objection is the same?

Mr. Foreman: Except that she is the daughter and is a schoolteacher, and the record reveals she is even teaching while this trial is going on, and has been a substitute teacher there for years. The others being band and music teachers, and the objection would be the same as to 224 that I made with reference to 223.

The Court: May I see the Exhibits 224?

(Tendered to the Court.)

We have counterparts. These likewise are carbon copies of check vouchers.

Mr. Foreman: I don't have 225. What is that?

The Court: That is the list. It has been admitted. These appear to be out of order. The objection is overruled. Exhibit 224 and its several counterparts are admitted in evidence. Now we will move to 226.

Mr. Foreman: May it please the Court, 226-(1) appears to be a yellow invoice charged to Oscar Carrillo, and signed with the name Oscar Carrillo, "Two tires and tubes." That is 226-(1). 226-(2) appears to be a white invoice—the first is dated 4-21-53 and 226-(2) is dated 4-18-53. charge two tubes and the tax, and also two tubes more. The first, 226-(1) for $90.64 and 226-(2) for $53.34. We object to them as —for the reason that no proper predicate has been laid for their admissibility. A. Cabal-

lero, who rendered these statements, has appeared here and so has A. Caballero, Jr., whose name is signed to 226-(3). Neither of these witnesses have undertaken to authenticate the purchase, sale and delivery of this merchandise, or to whom it was delivered. The signature Oscar Carrillo has not been identified, and we submit by comparison with other admitted signature in evidence, it can be established it was not signed by Oscar Carrillo, the one that appears with the signature. One is not even signed, and the introduction and inspection of them at this time after A. Caballero and A. Caballero, Jr. have been excused and returned 240, 50 or 60 miles away would be an undue burden and expense on the Defendant Oscar Carrillo, and I was not—we were not permitted to cross examine the Caballeros, or either of them, as to the authenticity or circumstances under which, if at all, this merchandise represented by these invoices is alleged to have been delivered, and—he is going to withdraw.

Mr. Wilkey: To save time, I think on the state of the record 226 is not properly admissible at this time. We reserve the right to connect them up later, however.

The Court: Very well. They are withdrawn.

Mr. Foreman: Now, with reference—

The Court: To 227?

Mr. Foreman: Yes, Your Honor. If it please the Court, 227 is an envelope. 227-(1) is an envelope bearing in the upper lefthand corner O. P. Carrillo, Sr., Secretary of the Benavides, Independent School District, Benavides, Texas. It has "Tom" on it and 227-(1) is a notation on

the back of a blank counter check of the San Diego State Bank with simply the word "Deposit" and the words Benavides Independent School District, L. M., and a line drawn through it and the word "Oscar" written under it, which has been interpreted by the witness as meaning this is to be deposited in the Benavides Independnt School District Local Maintenance.

227-(2) is a duplicate deposit slip issued by the Texas State Bank of Alice to the Benavides Independent School District Local Maintenance Fund dated 6-1-53, showing a transfer of two items, $7,025 and $26.96, making a total of $7,051.96, and those are the three embodied in 227. Now, we object to those being—are you going to withdraw those?

Mr. Wilkey: We will withdraw 227 in the light of the record, and reserve the right to offer it again and connect it up.

The Court: Very well. Now, 228?

Mr. Foreman: Since he has been asked about those, we will want to ask some questions about them ourselves without offering the exhibits. May it please the Court, if I recall correctly, the theory of the Government with reference to 228-(1), which is an alleged invoice of the San Diego Lumber & Hardware Company dated, nothing here but the year 1953. It is a $28.15 item, doesn't show what it was for, but I recall in my subconscious mind, I think I recall, an inference, argument, innuendo at the last trial that this is an item purchased for some lady other than his wife, a stove, by D. C. Chapa and paid for by D. C. Chapa but charged to the Benavides Independent

School District. At any rate it would be highly prejudicial, improper and inflammatory, and for that reason—it doesn't show what it is, but until a proper predicate has been laid or explanation as to the Government's contention with reference to it and testimony with reference to it, I think it is highly improper to inject it into this trial at this late date since Miss—I believe her name is Rosa Perez, the Government's witness representing the San Diego Lumber & Hardware Company has already testified, been excused, and gone away and could only be brought back at great expense, the only witness who could testify to anything with reference to this. Do you want to withdraw this?

Mr. Bottler: Your Honor, I would like to say in response to Mr. Foreman's objection that he has to go down into his super-ego, or did, to come up with something that was not brought out in the last trial—

The Court: I can hear you better if you will face the Court.

Mr. Bottler: I say, his subconscious mind has nothing to do with what came out in the last trial. Whether this was for someone else, some other lady, was not discussed.

Mr. Foreman: I didn't reach into my ego there, he did. I reached into Mr. Chapa's libido.

Mr. Bottler: No matter whose libido is concerned, Rosa Perez testified that there had been a bill of $28.15. It is in the record that had been sent to the School District. We will withdraw in the interest of time.

Mr. Wilkey: We will withdraw 229 also on the present state of the record, and we will place them right here if counsel wants to use them in interrogation.

The Court: Very well. Send for the jury.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: I announce to the jury that Government's Exhibits 223 and 224 in their several counterparts are admitted in evidence.

8-1844 R. R. GONZALES,

being the witness who was on the stand at the time court recessed, resumed the stand at this time and continued his testimony as follows:

8-1845 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Wilkey) Mr. Gonzales, in addition to being a tax collector-assessor for the School District, do you hold another position there?

A. I am the secretary of the School District.

Q. You are the secretary of the School District. What are some of your functions as secretary of the School District?

A. I sign the checks for the teachers and all of the employees.

Q. And in regard to checks which are canceled and returned by the bank, do you have custody of those?

A. I have the payrolls. The checks are kept by the bank.

Q. I see. All right.

A. I have the carbon copies of the checks.

Q. The preparation of the checks is part of the function of your job as secretary?

A. That is right.

Q. I show you what has been identified as Government's Exhibit 171 and ask you what that is?

A. This is the district office of the Benavides Independent School District.

Q. Who works in that office now? Put it another way, do you work in that office now?

A. Yes, I work there.

Q. I show you 172 and ask you what that is?

A. The same building.

Q. The Benavides School District office?

A. Yes.

Q. All right, and I will show you 173, and ask you what that is?

Mr. Foreman: What is 172, please?

A. The same office. The School District office. 173 is also the School District office.

Q. Of these three pictures here, 171 shows what part of the building?

A. The front.

Q. Does this street in front of it have a name or not?

A. Well, I don't know that it has a name. It is the school street.

Q. Now, then, 172 shows what part of the School District office?

A. That would be the west side.

Q. The west side, and 173 shows what?
A. The southeast.

Mr. Foreman: We have no objection to 171, 2 and 3.

Mr. Wilkey: We offer in evidence Government's Exhibits 171, 172 and 173.

Mr. Foreman: May it please the Court, I thought they were already in evidence, and if not, at this time—they had been identified but not offered?

The Court: The data I am keeping does not indicate that they have been offered in this trial. They bear numbers which were given them at the previous trial of this case, and according to the stipulation, the same numbers are used in this trial.

Mr. Foreman: I understand, Your Honor. That escaped me for the moment.

Mr. Wilkey: No further question, Your Honor.

8-1847 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Gonzales, may I have 223 and 224? I will return them, if I don't forget to. The record—I am pointing to 223-(1), which is a check dated January 31, 1953 for $166.66 for salary to George Carrillo, and a check for the same amount, being dated February 28, 1953, the same amount to the same party, the first one being 223-(1) and the second one 223-(3), and 223-(2) a check to Eloy Carrillo, January 31, 1953 for $140, and February 28 for $140. Do you know those parties?

A. Yes, sir.

Q. Do they teach music?

A. At that time they were, yes.

Q. Employed by the Benavides Independent School District, were they not?

A. Yes, sir.

Q. And do you know whether or not that in addition to teaching music, they played it occasionally in an orchestra?

A. Yes, sir, I think they did.

Q. Your son played with them, didn't he?

A. He may have. I don't remember.

Q. You have a son named Johnny Gonzales?

A. Yes, I have.

Q. Did he not study under George Carrillo, music, at school?

A. The band instructor was Petacio Rivera, and I think those other boys were his helpers.

Q. So far as you know, both George and Eloy Carrillo rendered services every day that school was open during the months of January and February, 1953, in consideration of those checks?

A. As far as I know they did work. That is correct, sir.

As far as I know they did work. That is correct, sir.

Q. And will you tell us approximately how many relatives of the Carrillo and Chapa families there were in Benavides, if you know?

A. Approximately I wouldn't say. There must be over fifty.

Q. Now, with reference to Exhibit 224-(1) and 224-(2), and going on (3), (4), (5), (6)(A), (6)(B), (7) and (8), all of which are checks for varying amounts payable either to Celia, Mrs. R. G., or Mrs. Rogelio

Ramirez, some for $45, some for $213.75, some for $257, tell us whether or not this Mrs. Celia or Mrs. Rogelio G. Ramirez is a college graduate with a degree, if you know?

A. I don't know that she is.

Q. Do you know whether or not she is a substitute teacher, sometimes teaching as long as a month at a time, others for a few days at a time?

A. That is right.

Q. Do you know, Mr. Gonzales, how long Mrs. R. G. Ramirez or Mrs. Celia Ramirez, being the same person, has been a substitute teacher in and at the Benavides Independent School District?

A. I wouldn't say exactly, but I think she has been with the school right along for the last five to eight years.

Q. Five to eight years. Then during January of 1953 and February of 1953 and January of 1954 and February of 1954, do you know whether or not Mrs. Ramirez taught, or do you know that she didn't teach?

A. I don't know that she didn't teach. I think she was employed as a substitute teacher, and I understood too that she was secretary for awhile.

Q. Secretary of the high school?

A. Of the high school teachers.

Q. Then so far as you know, every item represented by the originals of these checks, Government's Exhibits 224-(1) through (8) was for actual services rendered by the lady to whom these checks were payable, to the Benavides Independent School District, were they not Mr. Gonzales?

A. Probably so. I wouldn't know, sir.

Q. Do you know whether those $45 checks were for acting as secretary, and the other checks for teaching?

A. They could be.

Q. Now, Mr. Gonzales, those were not marked, but the first checks about which you were asked by Mr. Wilkey when you were back on direct examination, and let's get them first to determine how many checks there were. There were 15 checks represented there, weren't there?

A. Yes.

Q. And it appears on the account of the Freer High School with the San Diego State Bank at San Diego, Texas?

A. Yes.

Q. And each of the checks are signed with the—the printing Freer High School by W. F. Reed, Superintendent. Let me see how many are there. Thirteen are signed W. F. Reed, Superintendent, and the other two signed Elton Bowman?

A. Yes.

Q. Do you know Elton Bowman?

A. He is principal of the high school at Freer.

Q. Do you have the ledger account for the Benavides Independent School District account with the San Diego State Bank in the name of Freer High School?

A. No, sir, that is not kept by the School District.

Q. At any rate, now, in 1956 and 1957 this has been abandoned?

A. No, they still have it. The superintendent has charge of that. That is their football money.

Q. Now, Mr.—those checks run from—is that 11-1 or 7-1-52? Wait a minute, earlier than that. May of 1952 through November of 1953, don't they?

A. Yes.

Q. And those are ledger sheets of different accounts, September 30, 1953, Benavides Independent School District Local Maintenance B Fund. This is another and dif-

ferent account, being the Benavides Independent School District, Benavides Building Fund No. 3, September 30, 1953, October 31, 1953, November 30, 1953 statements. All of those are on that Building Fund No. 3?

A. Yes.

Q. And this group are Benavides Independent School District Building Fund, Series 1950, September 30, 1953, October 31, 1953, November 30, 1953, and this group is Benavides Independent School District Freer Building Fund, September 30, 1953, October 31, 1953, November 30, 1953, and attached to it is Benavides Independent School District check 18302, an original check countersigned by R. W. Milligan, dated January 24, 1954, for $1.08 to White Auto Store. Isn't that who it is payable to?

A. That is right.

Q. And the last group, Benavides Independent School District Building Fund, Series 1949, for the Texas State Bank of Alice, statement for September 30, 1953, October 31, 1953, November 30, 1953, December 31, 1953, November 30, 1954, February 27, 1954?

A. Yes.

The Court: Does this call for an answer?

Mr. Foreman: He answered. What was your answer?

A. Yes, sir.

Q. You were asked about those, but they are not in evidence so I will ask you about them. Plaintiff's Exhibit 227 is an envelope bearing the printing O. Carrillo, Sr., Secretary Benavides Independent School District, Benavides, Texas. It has got the word "Tom" on it, hasn't it?

A. That is right.

Q. Inside it has a notation signed "Oscar" saying deposit, BDS L.M., which you have interpreted as Local Maintenance, is that correct?

A. Yes, sir.

Q. It is a deposit slip to the Benavides Independent School District Local Maintenance, dated June 1, 1953 for $7,051.96, and it appears to have been received on that date by someone at the bank by the initial G, that being written in at the bottom of the duplicate deposit slip. Is G there? Do I correctly describe it?

A. Yes, that is the letter G.

Q. From your knowledge of any deposits that you may have made to it, or from any other records or source at your command what tellers would be named G?

A. No, sir, I do not. I do not know who G would be.

Q. I don't believe you have testified to anything with reference to 229, did you?

A. No, sir.

Q. Mr. Gonzales, when was it that you and Inspectors McMillan and Goad made this search and investigation of the records of the Benavides Independent School District tax office?

A. On May 18, this year.

Q. And when was that with reference to the day that you last testified before being called today?

A. About five or eight days previous to that.

Q. Then it was about five to eight days after?

A. After I testified.

Q. And what type inspectors are Inspector McMillan and Inspector Goad?

A. Both post office inspectors, as far as I know.

Q. Did you have any conversation with anyone else about their coming to do whatever they did?

A. No, sir. It was on a Saturday, and I had gone out to the ranch and they came by the house and asked for me,

and my wife made a trip out to the ranch to call me, that somebody was looking for me and that it was very important. I was out at the pasture, and she didn't find me, so when I came home about 11:30, she had the word someone was looking for me and about ten minutes to twelve, or noon, Inspector Goad came to the house and asked if I would open up the office for them, they wanted to check the records and go over them with me, and about 12:15 I went over there and we started checking the records.

Q. And remained there until how long, Mr. Gonzales?

A. It took a little better than six hours, about six hours and 15 minutes, something like that.

Q. Did anyone else except Inspectors McMillan and Goad participate in the search?

A. Just we three.

Q. Do you know whether they are postal inspectors from Houston?

A. I think Inspector McMillan comes from Dallas and Inspector Goad from Corpus, or the Valley.

Q. Did they bring any other written communication from Mr. W. D. Main or Mr. Wilkey or Mr. Bottler?

A. No, sir.

Q. Did they bring a letter with them?

A. Just a list of what they needed, what I was supposed to have brought in the first place, but I didn't find those other old records.

Q. Mr. Gonzales, was that the list from which you were reading as you testified? Is that the list that you brought? That is the list that they brought with them?

A. Yes.

Q. Did they leave all of the list or a copy of the list with you?

A. Yes, one copy.

Q. Was it your copy from which you testified, or a copy furnished you from which you testified after you got here?

A. It was the one left with me.

Q. And since that time, and except for that six-hour search, there has been no other search made since you testified here before?

A. No, sir.

Mr. Foreman: That is all, Your Honor.

8-1856 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) You said there were about 50 relatives of D. C. Chapa in Benavides. How many families are there related to Chapa?

A. I think Mr. Chapa's father had several brothers and sisters, and they all had big families.

Q. About how many families, as distinguished from 50 individuals, related to Chapa?

A. I would say some eight or ten.

Q. Eight or ten families?

A. Yes.

Q. Celia Ramirez is related to—she is the daughter of D. C. Chapa?

A. Right.

Q. And she works for the School District, is that right?

A. Yes, sir.

Q. And there is Oscar Carrillo, who is what relation of Mr. Chapa?

A. Son.

Q. Did he work for the School District?

A. Yes.
Q. And O. P. Carrillo, what relation to Mr. Chapa is he?
A. Son.
Q. Did he work for the School District?
A. I think he did for a while, as attorney.
Q. Elroy and George Carrillo are what relation?
A. Nephews.
Q. And did they work for the School District?
A. Yes.
Q. And George, what relation is he?
A. Nephew
Q. Did he work for the School District?
A. Yes.
Q. And Conrado Carrillo?
A. Yes.
Q. Does he work for the School District?
A. He does.
Q. Is there a Mr. George G. Carrillo?
A. Mr. or Mrs.?
Q. Mister.
A. He is married.
Q. Does George's wife work for the School District?
A. Not at the present time.
Q. Has she?
A. I don't know.
Q. She might have?
A. Yes.
Q. Is Lupe Carrillo any relation to D. C. Chapa?
A. She is Fernando Carrillo's wife.
Q. Has Lupe Carrillo ever worked for the School District?
A. She is a schoolteacher.

Q. Is there a Maria Estella Carrillo?

A. Yes.

Q. Is she related to D. C. Chapa?

A. Yes.

Q. Has she ever worked for the School District?

A. Yes.

Q. Does she now?

A. I don't know.

Q. Is there a Veronica Carrillo?

A. Yes.

Q. Has Veronica Carrillo ever worked for the School District?

A. I think she did. I am not positive.

Q. Now, then, in this bunch of bank statements here that Mr. Foreman examined you about, look through there and tell me, are there any bank statements there prior to September, 1953?

A. Prior?

Q. Prior to September '53.

A. There is September 30, 1953. September 30 of 1953 are the only ones.

Q. None prior to September 30?

A. None.

Mr. Wilkey: No further questions.

8-1859 RECROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Gonzales, did you bring the records you hold in your hand this time, or did you turn them over to Mr. McMillan and Mr. Goad?

A. I brought them with me.

Q. Did they bring any records with them?

A. No, sir, no records.

Q. Would you tell us with reference to the people working for the School Board as teachers whether or not they all have college educations or not?

A. Teachers?

Q. Yes.

A. Most of them. I would say the majority, 95 per cent of them, have college degrees.

Q. And all have been to college?

A. Yes, sir.

Q. Would you tell us approximately how many people in Benavides have college educations, if you know?

A. College educations? Well—

Q. Or college degrees, other than the actual teachers in the high school?

A. I don't know, but I would say just about 25 or 30 per cent.

Q. Twenty-five or 30 per cent of the people, or 25 or 30 people?

A. No, about 25 per cent of the people.

Q. Do you have one, Mr. Gonzales?

A. Yes.

Q. Where did you go to school?

A. Kingsville A&I.

Q. Mr. Gonzales, when you stated to the number of relatives D. C. Chapa has, how do you, or what degree of kin, or what type of relatives do you have reference to?

A. Mostly the brothers an sisters of Mr. Carrillo, who was Mr. D. C. Chapa's father. That is how I am arriving at a more or less figure. I think it was ten brothers and sisters in the Carrillo family, and they all have large families.

Q. Isn't it true that there are probably several hundred

relatives of D. C. Chapa's family including Mrs. Chapa, in the Benavides community?

A. Well, I don't know about several hundred, but they are large families.

Q. Isn't it true the history of the family as residents of that community and that county go back and prior to the time that Texas was independent of Mexico?

A. I think Mr. Carrillo was there at the time my grandfather died, which runs back 75 or 100 years.

Q. Seventy-five or 100 years. Do you know of any older family in Duval County than the Chapa-Carrillo families?

A. I would say my own family, the Benavides. The town was named after my mother's father.

Q. It is one of the older families?

A. Yes, it is one of the older families.

Q. Now, as a matter of fact, it would be—you have a number of relatives working there yourself, in the Benavides Independent School District now, don't you?

A. I have.

Q. And they are capable and honest employees, aren't they?

A. Yes, I think they are.

Q. Do you consider that the fact that they are working there is a violation of any ethics or laws that you know anything about?

A. No, sir, I don't.

Q. And you are holding the same job now, as tax assessor and collector, that D. C. Chapa held, aren't you?

A. That is right.

Q. Isn't it true that without the availability of the services of those relatives of D. C. Chapa, that various functions of the school would have been hurt, for instance was there enough music teachers without Eloy and George,

enough people with musical education, with ability to teach there, to have staffed the music department of the high school without the aid or assistance of those people there? Do you know?

Mr. Wilkey: Your Honor, that calls for a conclusion as to whether the band would have been hurt with or without George or Eloy, and I don't think the witness is qualified to answer that.

The Court: Well, if it is material, it is a matter brought out on direct examination. The only question in my mind is does it call for a conclusion?

Mr. Wilkey: I think it calls for a conclusion, Your Honor, and furthermore we object on the grounds it is not proper recross examination.

The Court: Well, I would allow that. I do have some question about materiality. It has been established these men did teach, hasn't it?

Mr. Wilkey: No, Your Honor, it hasn't been established that they did. The testimony was not to the effect. The testimony was that they assisted the director, and Mr. Gonzales, I think, carefully phrased his answer on that when he was asked a leading question.

The Court: I would think if they assisted, then they would be teaching. As to whether or not someone else may have been available, I don't know whether or not it is material. I sit as Judge of this Court, and I am sure other people were available. I think I do have some doubts about

its materiality. think the fact to be established is did they teach, not as to how many other people may have been qualified. That may open up an endless subject to how far out are you going to reach for other qualified people. I will sustain it on the materiality. I am reversing myself. I first said I would not sustain it on those grounds, but I will sustan the objection on materiality.

Q. (By Mr. Foreman) Isn't it true, Mr. Gonzales, mostly everybody in Benavides is related either by blood or marriage?

A. That is true.

Q. Isn't it true it would be difficult to run any function of either the schools, churches, banks, drug store, police department, or anything else without having overlapping relations?

A. Yes, sir. It is very hard in one way or the other not to affect a family. I know we were having trouble last time with our equalization Board. We could not check somebody not related to the members of the board. We had a hard time.

Q. How many do you have to have on the Equalization Board?

A. Three from Benavides and two from Freer.

Q. And you haven't been able to get an Equalization Board because everybody is related to everybody in the county?

A. We finally did.

Mr. Foreman: No questions.

Mr. Wilkey: No further questions, Your Honor.

8-1865 GRADY C. STARNES,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

8-1865 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?

A. Grady C. Starnes.

Q. Where do you live, sir?

A. Austin, Texas.

Q. By whom are you employed?

A. The University of Texas as auditor.

Q. In February of 1954, how were you employed?

A. I was Assistant State Auditor.

Q. Where were you on February 13, 1954?

A. I was in San Diego, in the court house.

Q. And what were you doing—I ask you, on February 13 and in San Diego, did you have occasion to examine any records of the Benavides Independent School District?

A. Yes, sir.

Q. What records did you examine?

A. I made an inventory of the bank statements and canceled checks that were on file with the District Clerk pursuant to the court order that had been given—had been issued by the Court and to the district, and made an inventory of those checks that were available.

Q. Pursuant to the order of the District Court, were records of the Benavides Independent School District brought into the court house to be examined?

Mr. Foreman: May it please the Court, that calls for a conclusion and calls for hearsay, and avoids the best evi-

dence rule as to what was called for by the Court. The subpoena itself or the order of the Court would be the best evidence and for this witness, who is not a functionary of the Court or Clerk of the Court or in charge of the court's records, to testify with reference to what was called for would be hearsay, and we object to it as both hearsay and the best evidence, calling for a conclusion.

The Court: Well, the objection is overruled. You may explore it on cross examination, and if he has the subpoena it may be examined. The objection is overruled, and you may continue.

Mr. Wilkey: Read the question back, please?

The Official Reporter (Reading): "Question: Pursuant to the order of the District Court, were records of the Benavides Independent School District brought into the court house to be examined?"

A. I—

Mr. Foreman: Also we object to that form of the question as leading and suggestive.

The Court: "Brought there to be examined," is that it?

Mr. Foreman: I will add to it also. Not only leading and suggestive, but duplicitous.

The Court: I will sustain the objection. You may attack it again, Mr. Wilkey.

Mr. Wilkey: I will rephrase it again.

How did the records get there?

A. They were brought in—

Mr. Foreman: I object unless he knows of his own knowledge how they get there.

The Court: Sustain the objection.

Q. Of your own knowledge, how did the records get there?

Mr. Foreman: He hasn't so stated he knew yet.

Mr. Wilkey: I am asking him of his own knowledge.

The Court: Let's attack it progressively. "Do you know how they got there?"

Q. (By Mr. Wilkey) Do you know how the records got there, Mr. Starnes?

A. Not actually how as to which specific person brought in all of the records which were there. I do know that I met one man who allegedly brought the records in.

Q. Who was that?

A. D. C. Chapa.

Mr. Foreman: We object to when he said "allegedly." He has disqualified himself and he is putting on hearsay. Somebody told him.

The Court: Objection sustained.

Q. (By Mr. Wilkey) Mr. Starnes, do you know D. C. Chapa?

A. Yes, I met him there in the court house.

Q. When did you meet him there in the court house?

A. Just prior to the 13th. I don't recall the exact date.

Q. I am referring to the 13th. On the 13th, was D. C. Chapa in the court house or not on that day?

A. I don't know on the 13th.

Q. Did you see him prior to the 13th?

A. Yes.

Q. Was it in connection with these records?

Mr. Foreman: I object to that as leading and suggestive, suggesting what he—

The Court: Overruled.

Q. In this inventory of the records you made, bank statements and canceled checks, what is the earliest bank statement which you found in your inventory?

A. The earliest date on any of the statements was August 31, 1953.

Q. August 31, 1953. That was a bank statement?

A. Yes.

Q. What was the earliest date of the canceled checks?

A. I don't actually have the dates of the canceled checks. The statement of August 31 had one canceled check, which must have been canceled either August 31 or September 1.

Q. Were those checks with the bank statement as we normally get them returned from the bank?

Mr. Foreman: Just a moment. Different banks may have different practices with reference to returning different checks.

Mr. Wilkey: I withdraw the question.

The Court: Very well.

Q. (By Mr. Wilkey) How were the checks and the bank

statements arranged?

A. They were folded within the statements in a more or less normal manner. I don't recall whether the checks had been placed in any type of numerical order, as some accountants will place them after they examine checks or in the order they came to the bank. Ordinarily the bank cancels checks and leaves them in that order and returns them to their customers.

Q. In addition to the bank checks, the canceled checks and the bank statements, did you inventory any other records of the School District there?

A. There was also furnished a tax collector's register and a few copies of minutes of the Benavides Independent School District minutes.

Mr. Wilkey: No further questions, Your Honor.

The Court: We have about five minutes. I am going to suggest a recess at this time. The jury is instructed—reminded of the instructions previously given. Court will recess until 1:45.

8-1871 AFTERNOON SESSION—JUNE 4, 1957

GRADY C. STARNES,

being the witness who was on the stand at the time Court recessed for lunch on June 4, 1957, resumed the stand at this time, and continued his testimony as follows:

8-1871 DIRECT EXAMINATION (CONTINUED)

The Court: Be seated, please.

Mr. Wilkey: Your Honor, I believe that I had indicated I was through on direct examination, but I do have a couple of more questions to ask the witness.

The Court: Very well, sir.

Mr. Wilkey: May I have Exhibit 27, please?

Mr. Starnes, I show you what has been identified as Government's Exhibit 27 and ask you if you have ever seen that before? Look at it carefully, if you will.

The Court: Let me make a suggestion. As a possible time-saver in the future, when you have a document, such as this, it doesn't have to be examined in open court. He could have examined it in the recess and testified he did examine it.

Mr. Wilkey: Thank you, Your Honor. I will remember that.

Mr. Foreman: Would you read the question back, please?

The Official Reporter (Reading): "I show you what has been identified as Government's Exhibit 27 and ask you if you have ever seen that before? Look at it carefully, if you will."

A. I can't be positive I have seen this exact copy, but these minutes—

Mr. Foreman: Just a minute. We object to any supposition, inference, or not responsive answer.

The Court: Objection sustained.

Q. (By Mr. Wilkey) Before the noon recess, you referred to seeing some minutes in Duval County at the court house on February 13, 1954?

A. Yes, sir.

Q. Without reference to this, will you describe, as you did for me, the minutes you saw there in the court house on February 13?

A. They were typed carbon copies on legal size sheets in a size possibly 100 sheets or so that were bound with a metal press-type binder.

Q. Were there any other minutes other than those you have just described submitted to you for examination?

A. No.

Mr. Foreman: May it please the Court, I don't object to the question or to the witness except inso-as the use of the term "minutes" is concerned. In view of the record in this case that they were not in the form of the minutes that were kept in the time they were purported to cover, we feel it is confusing and an unfair inference in the record for the prosecuting attorney to call those, that which has not been established as being minutes. We have no objection to their being called any other terminology.

The Court: Let's refer to it as Government's Exhibit 27.

Mr. Wilkey: I would like to call the Court's attention to this. Inspector Main testified the Defendant Oscar Carrillo, when shown this in February of 1954 and asked what they were, said, "Minutes," and he also testified—I mean Inspector Main was shown Government's Exhibit 27.

Mr. Foreman: I think that is correct, and I think pos-

sibly my motion should be to limite the testimony to Oscar Carrillo insofar as—

The Court: At the time it was offered, it was suggested it be limited. It was moved to be limited to D. C. Chapa, Oscar Carrillo, Octavio Saenz, and Jesus G. Garza, and it was so admitted, limited to those defendants only.

Mr. Foreman: We move that this testimony be limited as to them—first we move it be limited to Oscar Carrillo, and in the event of that being overruled, we make the motion as to the others to whom it has been admitted.

The Court: The testimony concerning Exhibit 27?

Mr. Foreman: Yes, Your Honor.

The Court: The testimony concerning Government's Exhibit 27 will be so limited.

Mr. Wilkey: Very well, sir.

Mr. Starnes, concerning your description of what you saw there on February 13, 1954 in the Duval County court house when you were inventorying the records of the Benavides Independent School District, is this Government's Exhibit 27 similar or dissimilar?

A. Similar.

Q. Is there any significant difference between that Exhibit 27 and what you saw on February 13, 1954?

A. None that I recall.

Mr. Wilkey: Thank you. No further questions.

Q. (By Mr. Foreman) Mr. Starnes, who was State Auditor at the time of this 13th, I believe—13th of December, 1953 that you were there?

A. No, February 13, 1954.

Q. I beg your pardon. February 13 of 1954?

A. Yes, sir.

Q. And where were you staying?

A. We were staying in a hotel over in Alice. You mean where were we spending the night?

Q. The Alice Hotel?

A. Yes.

Q. How many individuals—who was State Auditor at that time?

A. C. H. Cavness.

Q. C-a-v-e-n-e-s?

A. No, sir, that is the most frequently misspelled word in the State set-up. C-a-v-n-e-s-s.

Q. You were the only one?

A. No, sir, there were several of the assistants down there.

Q. Several assistants down there?

A. Yes, sir.

Q. How many first assistants—I don't mean first assistants, but how many assistants do we have or did you have in the State Auditor's department in February of 1954?

A. There is a first assistant State Auditor, who is W. A. Harrison, was at that time and still is, and five supervising assistant State Auditors, of which I was one, and a staff of approximately 65, perhaps 60, assistant State Auditors.

Q. And there were of course all—

A. They were not all at San Diego. I didn't mean to

imply they were. There was one other supervising assistant, Mr. Cavness, and possibly four assistants, I think, would probably be about right.

Q. And the auditor himself and 40 per cent, or two of the five supervising assistants?

A. That is right.

Q. And an indeterminate number of—what do you call the lower echelons?

A. Seniors, semi-seniors, and juniors is the Government terminology in accounting practice.

Q. Were those all seniors, or approximately the same number of semi-seniors and juniors?

A. About the same number.

Q. There wasn't over 30 or 40 per cent of your staff assigned to Duval County at that time?

A. There never was that percentage.

Q. There never was over a dozen of you there at one time?

A. There never was a dozen there at one time.

Q. How many was there?

A. I think probably at the most six or seven, possibly eight.

Q. Will you tell us whether or not you were there under orders of the Attorney General, John Ben Shepperd?

A. We were there under orders from Mr. Cavness, and we took orders only from him in connection with our work of course.

Q. Do you know whether or not Mr. Shepperd ordered him there?

A. H didn't order him there. He requested the help of the State Auditor and his staff, and Mr. Cavness, after giving due consideration to the request, and checking with the Audit Committee, possibly decided that it was bene-

ficial to the State's interest to assist the Attorney General.

Q. Excuse me. Were you there when Judge Broadfoot fired the Old Party county auditor and replaced him with a Freedom Party auditor, to-wit: Donato Serna?

A. I am not familiar with the Old Party, new party and newer party. A man named Stancil was auditor when we were there first, as I recall, and I do recall that at a later time he either resigned or was replaced by Judge Broadfoot. I wasn't there at the time.

Q. Do you know whether or not he was replaced by another Old Party member, and Judge Broadfoot fired him and said he wouldn't have— do you remember whether that is true or not?

A. I am still not familiar with who is the Old Party and who is the new party.

Q. How long did you remain there, Mr. Starnes?

A. As I recall, we arrived in San Diego about the 10th of February and we left possibly the 13th or the 14th, maybe the 15th.

Q. In addition to these—about how many assistant Attorneys General were there domiciled in the Alice Hotel and active in the Duval County court house along with the Auditor's staff you represent?

A. Three or four, as I recall.

Q. Could there have been eight or ten more?

A. Well, I don't believe there were that many at the time I was there.

Q. Tell us the ones you do recall.

A. Well, the ones I do recall as being there specifically would be J. C. Davis, head of the County Affairs Division. Mr. Shepperd was there briefly.

Q. By that you mean General John Ben Shepperd?

A. Yes, sir, and Willis Gresham, Frank Penato. I believe a man named Jones came down after we had started in.

Q. He was an assistant?

A. I believe that he came but on one of the times while we were there.

Q. Sam Ratliff?

A. I don't recall whether Sam was there at this particular time or not. He, of course, was there at other times.

Q. Sidney Chandler?

A. Not at this time. I don't believe Mr. Chandler was an assistant at that time.

Q. Are there any others you recall?

A. None others, no, sir.

Q. Do you remember one named Castleberry?

A. I know him, but I don't believe he was down there at the time. He may have been. I think he was down there, too, but I don't recall he was there at the beginning.

Q. By "at the beginning," you mean the 10th to the 13th of February?

A. Yes, that was the first time I went to Duval on this particular investigation.

Q. You went there several times?

A. I was there one other time on the Duval investigation.

Q. When was that?

A. It was later in the year, probably in the latter part of June.

Q. Of course you all made a full and complete audit of the Benavides Independent School District books for the years 1949, 1950, 1951, 1952 and 1953?

A. No, no audit was available or no audit could be made since the records weren't given to us.

Q. Did you undertake to make one?

A. No, we never did intend to make a full and com-

plete detailed audit as we accountants consider a detailed audit. It was strictly an investigation to try to see what might be indicated from the records.

Q. What do you accountants call a full and complete audit, Mr. Starnes?

A. A review of the expenditures and of the revenues coming into a governmental agency. Since this involves governmental, I am sure you wouldn't want me to go into corporation audits.

Q. I don't want to take that long.

A. Tracing the action of the board starting with the head authority of the entity, and seeing that the actions taken by the assistants or employees have followed through with the orders from their superiors or the board, and that the actions of the board met statutory requirements to the extent necessary.

Q. Well, now, suppose this as a fact situation, that you had a complete alphabetical list of every taxpayer of a political subdivision, and suppose that you had a complete record of all of the deposits in a bank, the depository bank, and you had a complete record of all of the checks written against that account for a given year, say the years 1952 and 1953, could you, from such records available, and with your experience as an auditor, which is recognized, make an audit so as to determine whether or not all of the funds in that governmental subdivision had been collected, deposited, and spent in behalf of the governmental agency and bearing on its legitimate business?

A. Could I have that question read back?

Q. Yes, sir.

The Official Reporter (Reading): "Question: Well, now, suppose this as a fact situation, that you had a complete

alphabetical list of every taxpayer of a political subdivision, and suppose that you had a complete record of all of the deposits in a bank, the depository bank, and you had a complete record of all of the checks written against that account for a given year, say the years 1952 and 1953, could you, from such records available, and with your experience as an auditor, which is recognized, make an audit so as to determine whether or not all of the funds in that governmental subdivision had been collected, deposited, and spent in behalf of the governmental agency and bearing on its legitimate business?"

Mr. Wilkey: Your Honor, before he answers, I object—I have no objection to the first part or major part of that hypothetical question, but I do object to the last phrases which were that they call for a conclusion as to whether they were spent for—the last few phrases which call for "spent for proper purposes," which calls for a conclusion of whether the persons listed as receiving the money even exist.

The Court: I believe it is a proper question. In other words, can the audit determine such?

Mr. Foreman: I object and except to the prosecuting attorney attempting to phrase my question a hypothetical question.

The Court: He has the right to make an objection, but it is not well taken.

Mr. Foreman: I submit that question was more designed as an argument to the jury than an objection.

The Court: Well, I don't think so. That is immaterial. The witness will answer the question. Do you remember it?

The Witness: I think so, Judge.

To begin with, the alphabetical listing of the taxpayers involved would need to be individually verified to determine that they were all of the taxpayers. It would also need, or you would therefore need, the addresses and also the individual information from which the tax roll was prepared to see that the type of tax being levied was properly covered. In the situation that you have given there, what an auditor would have to do, he would have to turn into a bookkeeper and go back and actually set up the records ordinarily the bookkeeper would prepare of the incoming receipts, and so on, to properly account for the revenues.

You would have to then trace that money into the deposit you refer to to determine all the revenues that should have been collected were in fact deposited. After the money is in the bank, then the expenditures would have to be examined as for proper support, that is receipts of the indicated goods and or services that should have been given to the entity, and if such services and goods were authorized by the governing board. Those, of course, would be classified, and a report could be given after you had gone through that time. That would be a rather extensive job you outline.

Q. Your answer is yes?

A. With qualifications.

Q. Sir?

A. It is yes, but with qualifications because all of the information that would be needed by the auditor to give

an unqualified report would have to be supplemented by what you put into the question, sir.

Q. One of the supplements that would be required would be a tax roll, but that could be constructed from the list, complete list of the taxpayers, could it not?

A. Not necessarily a complete list of taxpayers because some might not have paid, the taxpayers, therefore the ones that had not paid when the roll was prepared would not be included.

Q. Mr. Starnes, isn't that taken care of by your statement it would be necessary to contact the taxpayers, and my question carried with it the hypothesis it was a complete and accurate list so we don't have to qualify that. That is not my question.

A. I didn't know you were going back to your original question. I thought this was a different question. Going with the hypothesis that was a complete list, that would be true.

Q. Did you understand that was a part of my question?

A. I understand it now, but I didn't when—

Q. Then with that as a part of the question, a complete and accurate list of the taxpayers for a given year, if the auditor or the agency asking or requiring or seeking the audit were sufficiently concerned, all that would be necessary would be the items I mentioned for an auditor or bookkeeper working under the auditor's supervision, to make a determination of any shortage, if there were a shortage, wouldn't it?

A. No.

Q. What else would be required?

A. Well, a shortage can come from a number of different—

Q. Pardon me. I shouldn't have used the word shortage. I should have included as part of my original question as to whether or not all of the deposits were deposited and expended by check. Would anything more be necessary than those items included in my hypothetical question?

A. If the tax roll was properly filled out as to the taxes paid, I think that you could determine that there was a shortage, but you couldn't determine where the shortage was, if there was a shortage.

Q. I am confused. Will you repeat that answer back for me, little lady?

The Official Reporter (Reading): "Answer: If the tax roll was properly filled out as to the taxes paid, I think that you could determine that there was a shortage, but you couldn't determine where the shortage was, if there was a shortage."

Q. I eliminated shortage, to avoid getting into a dialectic argument with you over the meaning of words, and get back to my original question.

Mr. Wilkey: That is argumentative.

Mr. Foreman: I am trying to direct, as near as I can, to the fact that he is now using the word shortage. Will you go back and read my original hypothetical question, little lady?

The Official Reporter (Reading): "Question: Well, now, suppose this as a fact situation, that you had a complete alphabeical list of every taxpayer of a political subdivision,

and suppose that you had a complete record of all of the deposits in a bank, the depository bank, and you had a complete record of all of the checks written against that account for a given year, say the years 1952 and 1953, could you, from such records available, and with your experience as an auditor, which is recognized, make an audit so as to determine whether or not all of the funds in that governmental subdivision had been collected, deposited, and spent in behalf of the governmental agency and bearing on its legitimate business?"

Q. Will you answer that question?

A. I think I have already answered that first question.

Q. You explained how you could do it and what you would have to do to do it.

Q. Having explained that, would you make the simple answer whether it could be done with those records?

A. It would depend a little bit on what—on how accurate the tax roll was, and presuming it was accurately maintained.

Q. I haven't mentioned tax roll in that question at all. I haven't suggested the word tax roll. It is not in the question. I am going to ask you about the tax roll in a minute. That is going to be my next question, but I am leaving that out of this question deliberately and intentionally, and only limiting my question to what it contains, and doing that purposely. Will you please answer the question as asked?

Mr. Wilkey: Your Honor, we object to counsel arguing with the witness. The witness is obviously trying to answer to the best of his ability. It is a complicated question and he is entitled to put in any qualification in his an-

swer he wants to, whether Mr. Foreman asked for those qualifications or not.

Mr. Foreman: May it please the Court, I object to the form of the objection. I don't consider it an objection. He is making a speech, assuming to this jury—

The Court: Mr. Foreman, you may ask your question and if there is an objection to the question, I will entertain it.

Q. (By Mr. Foreman) The question is simply as it was read, Mr. Starnes, and if you listen carefully, the word tax roll doesn't appear in it at all. Let's assume that if you had a tax roll it would be easier on the auditor, but could not the auditor construct the tax roll if he had an accurate and complete list of all of the taxpayers? Couldn't he?

A. Yes.

Q. All right. Then I don't want the tax roll in this first set of questions, and I am not asking how laborious it would be or how much time it would take or how much bookkeepers or assistants you would have to have, but could it be done?

A. Yes.

Q. Now, then, let's assume one more part of that hypothetical question, and that is assuming an accurate tax roll to have been prepared and available, for any given years, in addition to the other information, that is all that would be necessary to do it in a fairly quick time, isn't it?

A. I wouldn't say a fairly quick time.

Q. All right. How long, assuming in addition to what is included in my original hypothetical question an ac-

curate tax roll listing the mineral royalty interests, real estate improvements, and however a tax roll is, assuming that likewise to be available along with the other items included in my hypothetical question. Would you estimate how long it would take to audit an independent school district's books so as to determine whether or not there was not a shortage?

A. That—it would still take an extended time.

Q. All right, sir. Extended, and you have something in mind I am sure and could better explain in terms of months or days or hours?

A. Well, it would be months. Of coure, it would depend on how many pages, how many entries in the tax rolls and so on, but it would certainly be months, I am sure.

Mr. Foreman: May I have the tax roll exhibits, please, sir?

This is in evidence here as Exhibit 35, Mr. Starnes, and since we are closer together, I would appreciate your keeping your voice up. Examining that—that is in evidence here identified and established as the tax rolls for the Benavides Independent School District for the years 1952 and 1953.

May I have the alphabetical list of taxpeyers now, please?

(Tendered to counsel.)

That is 1953. Now, for 1952. That was the one that came in the original Gonzales testimony.

(Tendered to counsel.)

(Document placed on counsel table before the witness.)

Have you examined enough, Mr. Starnes, to be able to give us an estimate with the tax roll there, the number of pages, items, and taxpayers, how long it would take, say, Mr. Cavness, yourself and the other man, even just the crew you took down there, less than a dozen, to have obtained the information requested in my original hypothetical question?

A. Well, to begin with, that entire group wasn't working just on the Benavides Independent School District, but presuming to answer your question, it would probably take, I would say, up to, well, outside of six months. In other words, up to six months to get this straightened out. After it was straightened out, it would be an easier basis on a follow-up basis.

Q. At any rate, you would have had time from February 13, 1954 to June 4 or 5 of 1957 to have completed such an investigation, wouldn't you?

A. Yes, if Mr. Cavness had concluded it was in the State's interest to go into and make it, it could have been completed.

Q. And any other similar group of expert auditors could, with the same crew, could conceivably achieve the same results in the same estimated time?

A. Working on only this project, yes.

Q. And if more were working on it than the number you contemplated in your answer to the hypothetical question, it could conceivably be done in a shorter time?

A. Some shorter, although you get too many people working on one page, it is a little bit cumbersome sometimes.

Q. But they are loose-leaf pages, and different ones can work on different pages without interfering with each other, couldn't they?

A. To a certain extent.

Q. Do you know the auditing firm of Slavick & Ponder, auditors of the Benavides Independent School District?

A. I know a Mr. Ponder who is a certified public accountant in Corpus Christi. I have met him at State society meetings and State board meetings in Austin.

Q. Do you know Frank Slavick, the senior partner?

A. No, sir, I don't think I have ever met Mr. Slavick.

Q. You consider them a reputable, competent firm?

A. Well, I have never heard anything against the firm as such, no evidence of malpractice or anything of that kind.

Q. Do you know whether or not they audit a number of political subdivisions, including other school districts than the Benavides Independent School District?

A. No, as a matter of fact I do not know that they audit any other. I have heard Mr. Ponder's firm was employed by the Benavides Independent School District.

Q. As auditors?

A. As auditors, yes, sir.

Q. Now, do you, from what you know of Mr. Ponder, assume he would be capable of heading such and making such an audit for such years as the records are available in the form as contained in my hypothetical question?

A. It depends on the circumstances you run into. On the hypothetical question that you have asked, and everything coming through in order, yes.

Q. Well, it assumes just what is laid out here in admitted complete tax rolls for the years they purport to be,

the admitted complete alphabetical list of individual taxpayers, the complete list of the disbursements?

A. You are still speaking hypothetically?

Q. Sure. Up to now, I am only asking you—every question I have asked you is a hypothetical question.

A. Right.

Q. And as an expert witness, we are entitled to ask hypothetical questions.

A. Yes, sir.

Q. By the way, here is something that was not included in my hypothetical question, and that is a complete rendered roll of all of the property as rendered by the taxpayers for those years, both oil and real estate. Would that facilitate and expedite the completion of the audit?

A. Well—

Mr. Wilkey: Pardon me. Your Honor, we object to that question in relation to the document Mr. Foreman holds in his left hand because he termed that a complete roll and the evidence so far shows that certain taxpayers' names for which checks were received are not in that packet of instruments which he holds in his hand; so we object to the hypothetical question as being contrary to the evidence which he is basing it on.

Mr. Foreman: May it please the Court, I understood the Government through Mr. Gonzales, not this morning, but at his former appearance, to have offered this and Mr. Gonzales to have testified exactly as I have referred to it, and up to this moment I do not recall the Government challenging the veracity or accuracy of Mr. Gonzales testimony. Now, I would rather have the Court's recollection.

The Court: The Court has no recollection, and if it is important, we will have to find it in the record.

Mr. Foreman: I understand now that Mr. Wilkey says, and I don't recall anybody but Mr. Wilkey saying, that it was not what Mr. Gonzales said it was.

Mr. Wilkey: Let me refresh the Court's recollection. Your Honor will recall Mr. Gonzales took this packet of documents, took it apart, and on that table went through and tried to find certain names of taxpayers, consuming several minutes in so doing, and some of those read off he was unable to find. We offered that exhibit there as being the record in the custody of Mr. Gonzales for what it is, and we heard Mr. Gonzales' teseimony as to what he could not find in it.

Mr. Foreman: I will accept the explanation. I am sure Mr. Wilkey—

The Court: What is the number of the exhibit?

Mr. Foreman: 211.

The Court: My notes may be incomplete. My notes do not indicate that 211 is in evidence. Some matters have been discussed which have not been offered.
What do your notes indicate, Mr. Anderson?

The Clerk: It is not in evidence.

Mr. Wilkey: Our notes indicate it is not in evidence, and has not been offered yet.

The Court: It is not in evidence and has not been offered.

Mr. Foreman: It is identified as 211 and 212, 213 and 214. Assuming that those are—whether offered—

The Court: My notes are that Government's Exhibits 210, 211, 212, 213 and 214 have been identified, but not offered.

Mr. Foreman: I was only going by the marks and did not have a complete file.

The Court: Very well.

Q. (By Mr. Foreman) Regardless, assuming that you have, in addition to those, that is the tax roll, a complete and accurate alphabetical list of the taxpayers and a complete list of all of the checks—and may I have what was offered by Mr. Roach?

(Tendered to counsel.)

I believe it is a complete list of all the deposits for the Benavides Independent School District in the Texas State Bank of Alice. It is a long list of deposit slips.

The Court: Those are Government's Exhibits 85, 86, 87 and 88, they are in evidence.

Mr. Foreman: And run down to triple, quadruple—

The Court: Government's Exhibits 85 and 86 are each in 93 counterparts running from A through quadruple-O.

Mr. Foreman: Do we have the ledger sheets for those accounts?

Now, adding to the exhibits, meaning the complete list of the checks written on the depository bank, a complete alphabetical list of all of the taxpayers in the district, a complete list of the tax rolls, and an almost complete list of the renditions, we will assume some missing, could you or not, from the complete list of taxpayers determine exactly which were missing from the renditions?

A. Are we still on hypothetical?

Q. Yes, sir. Everything is hypothetical.

A. Actually when you insisted on using the word "complete" in your hypothetical question, to begin with, sir, I presumed those things to be included in the available records so my answer actually isn't changed. Yes. In other words, in answer to this specific question, yes, you could trace from the alphabetical list to the rendition rolls and see which ones were not included in the alphabetical.

Q. Do you understand my original hypothetical question included or referred to the separate individual renditions of the taxpayers?

A. Well, when you say that the alphabetical list is complete, I presume that is what you mean. In other words, that was backing that up.

Q. When I say alphabetical list, I did not mean or include incorporated. I mean a list of the taxpayers, a complete list of every individual or corporation who paid taxes to the political subdivision. I didn't mean a complete file of everything that they might have made out, simply a list of the names themselves, could they not be contacted and verified, and isn't that a common auditing practice, what you call an outside audit?

A. Yes, independent verification.

Q. Even if you didn't have the tax roll, from independent verification you could establish it, and having the tax roll itself simplified, assuming the tax roll is complete and accurate for the time covered?

A. Yes.

Q. That would eliminate, of necessity, the contacting and verifying that which is already in?

A. Yes.

Q. Assuming you had a complete list of the people and corporations who pay tax, and practically a complete list of their individual renditions, it would further simplify, quicken and expedite the discovery of the evidence or information sought in the hypothetical question, wouldn't it?

A. Depending on the response to the expositions that you find there with the taxpayers, where they are still available to be contacted.

Q. Yes, sir.

A. Change of ownership, deaths, and so on would certainly slow down an operation of this kind.

Q. Yes, sir.

A. And I might hasten to add at this time, since I understand you to mean an alphabetical list of taxpayers with nothing else available, assuming you had on that list the amount they were to pay that six-months period wouldn't near cover it. You would be writing people for six months that wouldn't even answer your letters in a condition of that kind.

Q. If you had the renditions, the only people you would have to contact to verify would be such as missing from the rendition from the alphabetical list?

A. You would have to come back and write all of them

because you don't know how much money the alphabetical people paid.

Q. Would you have a list as to how much they should have paid?

A. Well, you will have the information from the rendition sheet over there.

Q. Have you ever audited one of those tax rolls?

A. We checked this briefly in San Diego. I have never actually made an audit of a tax roll as such.

Q. You don't know whether the tax roll has on it who paid and how much?

A. Well, it has the information on there.

Q. Do you mean, or do you—we are assuming as part of our question it is accurate, including what had been paid.

A. We went back around to the point where we are not quite seeing on the same beam. In other words, you've got the tax roll and rendition sheet and alphabetical list, and they are all there complete with the exception of the rendition sheet and a few of those are missing.

Q. That is they hypothetical question, in view of the explanation—

A. On that basis, you could move from the rendition sheet to the tax roll, from the alphabetical list to the tax roll, and find out the amount of money that should have been paid with the exception of the missing rendition sheets over there. If those sheets had just been pulled out, but the people's names were on the roll, you can still go from the alphabetical list to this. You wouldn't know whether that was accurate, and coming from the taxpayer or not, but you could verify those individually and determine that.

Q. I understand; but I believe I assumed as true that

this is accurate, and this is accurate meaning tax rolls and tax lists, and that these, insofar as they go, are accurate, but that a few are missing?

A. Yes.

Q. So that it would be only if you assumed this and amount paid as accurate, you wouldn't have to contact the tax payer to ascertain that for the years in which the rolls are available?

A. As an auditor, you probably would want to do that anyway, but in following your hypothetical question, yes, you wouldn't have to do that.

Q. We are only taking it as the record of this case is concerned, and therefore I am attempting to include in my hypothetical question what is in evidence here and undisputed, and except nothing such as a few of those missing as may be true. If I understand, it would take not only these alphabetical lists and the tax rolls and the accurate account of the disbursements, but also the renditions and, of course, the bank statements including duplicate—original deposit slips of the depository bank?

A. Yes.

Q. And with all of this information available, it would still take approximately six months to complete an audit so as to arrive at the information requested in my original question?

A. Well, now, you have cut out part of what I thought you were considering when you limit just the listings made by the depository bank as being the support only for disbursements from the bank account. Now in my answer to your original question, it was my understanding that the canceled checks would be available for review, and that they would be supported by vouchers or bills coming in. Now, when you run into a situation like that, there isn't

any estimate of time I would want to give to this Court as to how long it would take, and you start running those things down, people you can't find. In other words, you might be on that thing five years because you can't find somebody.

Q. Mr. Starnes, did you understand my hypothetical question to include anything except an accurate list of the checks drawn on the depository bank?

A. Yes, I did.

Q. What else did you think I said?

A. I thought you included—I am talking about a complete set of records, as such, that they would include the canceled checks that had been issued by the entity and made available after they cleared through the bank, and proper support in the form of vouchers or paid bills or other evidence for services rendered.

Q. Actually, if I had mentioned canceled checks in that hypothetical question, which I did not, it would take a great deal longer, and you took that into consideration, did you not, in estimating the six months time?

A. Surely.

Q. Suppose we eliminate that. I didn't ask it, it didn't come in here until you mentioned it, and assume what I did ask and see how much less time it would take. I said a complete list of the checks written on the depository bank, a complete list of the deposit slips, and a complete list of the ledger accounts of the depository bank. Let's eliminate the conjecture of the original checks. Would that make it shorter and easier?

A. No, sir. In other words, if you had your canceled checks there and the auditor was going to sign this report, he wouldn't sign the thing in the first place if he couldn't

have canceled checks and supporting bills to the list here in the statement.

Q. Are you talking now about the ethics of the auditing profession? Suppose it wasn't an auditor. Suppose a sixth grade bookkeeper?

A. If he was a prudent person, he wouldn't want to come along and say, after he had examined the detailed list of checks, he wouldn't say that that was—that the money had been prudently spent. He would have no support for making that statement.

Q. Mr. Starnes, did you understand my hypothetical question to include the words "prudently spent"?

A. No, not actually in the beginning.

Q. It isn't in there in the ending either. I am still on the same question, and everything I said is tied to that same question and I am not altering it a bit, and I would appreciate it if you would not.

Mr. Wilkey: Is this the question which winds up "disbursement for school purposes"?

Mr. Foreman: You will hear it in a minute. I am just asking that now. I think the stenographer knows which question I want read.

The Official Reporter (Reading): "Question: Well, now, suppose this as a fact situation, that you had a complete alphabetical list of every taxpayer of a political subdivision, and suppose that you had a complete record of all of the deposits in a bank, the depository bank, and you had a complete record of all of the checks written against that account for a given year, say the years 1952 and 1953, could you, from such records available, and with your

incorporated in it Mr. Foreman's hypothetical question dealing with the alphabetical list and other things enumerated to this witness by the court reporter, the tax rolls, tax rendition and other material included in a completely different set of questions by Mr. Foreman. It is not clear to the prosecution what documents he is requesting. May we suggest it be made clear.

The Court: Is it clear to the witness?

Mr. Foreman: That is the test.

The Witness: I think so, Your Honor. In his original question, he didn't use the word tax roll in it. He objected to my using it, saying he would bring that in later. In this explanation now, I have omitted the word tax roll because that wasn't in the original question, so what I am explaining at this time is your original question.

Q. (By Mr. Foreman) Then I will ask a new one, and see if this will facilitate the search. Assuming as a hypothetical question situation for a governmental subdivision, a taxing agency, namely the Benavides Independent School District, the list alphabetical of a complete list of the taxpayers—

A. As to names only?

Q. As to names only. Only names. Names only, nothing but names, and also in this hypothetical question assuming the availability of the tax rolls for that year showing or purporting to show the same taxpayers, but in addition to showing the taxpayers, showing opposite each taxpayer his taxable property in the district, the amount of taxes due, the amount of discount to which he might be en-

titled, if any, and the amount of taxes paid and when paid, and also as regards any not paid, that they were not paid, and assuming them to be correct, and assuming also a relatively complete list of renditions of the same people whose names appeared on the alphabetical list, on the tax rolls, and therefore the taxpayers again, another and different list, but assuming that a few may be missing, less than nine or ten in the renditions, they did not appear —I mean they are on the tax roll, are taxpapers, but do not appear in the rendition and assuming a complete ledger sheet of the checks written withdrawing money and the same ledger sheet showing a complete list of all deposits. Now, assuming that that is available—

A. What do those ledger sheets include?

Q. The ledger sheets include deposits, date of deposits, withdrawals, the checks, the amount of each check, and the date of each check.

A. But not the names?

Q. Not at all. Just a check ledger sheet.

A. You are talking about a bank ledger sheet?

Q. That is right. The ledger sheet of the account with the same bank. It would needs necessarily show if any more than were reported had been withdrawn if it were on the ledger sheet?

A. Yes.

Q. Then assuming the deposit slips complete, the ledger sheets complete and accurate, and all of the lists, alphabetical lists of taxpayers, the accurate tax rolls, and the renditions, the deposits and the ledger sheets, could you not, without regard to whether or not the withdrawals were, as I included in my original question, legitimate, could you account and determine whether or not all of the money that according to the tax rolls should have

gotten into the bank did get into the bank, and whether or not it was all checked out by checks, and if not what wasn't checked out? Could you determine that?

A. No, because you have not said that the tax roll would be what was purported to have been paid.

Q. I am assuming it would be correct regardless of whether it is purported or not, for the purpose of the question.

A. For the purpose of the question, as an auditor you have got to have something to back up that assumption, and an auditor wouldn't go in and prove, or couldn't go in and prove if he didn't have something to back up or to arrive at the actual accuracy of the tax roll. If he was purported to be—by purport, that could be someone, tax collector or someone else says this is complete. He would want more than just that. You would have to go through and set up some sort of a daily cash collection sheet backing up the items throughout the book here, and when you arrived at all of the day's receipts indicated throughout this book, they should come back and tie into the deposit slip that went to the bank for that particular day, if the bank was depositing their receipts intact. You haven't said they were depositing the receipts intact. If they were depositing them intact and this record over here was complete, then if the auditor was accurate in his work, then every day's deposits would tie into a particular deposit slip, the deposit slip would tie into the ledger sheet, but if you have one single error in that, and it can be from one penny on, because those errors can end up in some awfully peculiar small items at times, if you have one single error, the whole thing will fall down because you can't go back and pinpoint where the error is. It would be an accident if you can find out what day it was, on whose account it was.

Q. Haven't you included corporations and dragged into your answer some hypotheses that weren't in my question?

A. I had to put those in to answer your question.

Q. Don't you bring them in to answer something I didn't ask, and completely change the question as asked? Didn't you in fact?

A. You can try to do what you are saying. I say if it comes out exactly correct all the way through, that answers your question, if it is exactly correct.

Q. Assuming the correctness of the items that I included in my hypothetical question last time, the last one which included all of those items that are in evidence here, such a determination could be made, could it not, sir?

A. You can tell whether it is true, but you can't tell whether it might not be true.

Q. You could tell whether there was a shortage between the amount of taxes paid and the amount deposited and the amount disbursed, couldn't you?

A. No. It wouldn't necessarily be a shortage because there is a difference.

Q. A discrepancy then?

A. A discrepancy, not a shortage.

Q. And you could tell whether the discrepancy was an excess or deficiency?

A. You could tell whether that net discrepancy is excess or deficiency.

Q. Then the answer would have been with reference to the word shortage. If there had been a shortage, you could have told it, but there might be an excess, therefore you couldn't tell if it was a shortage and that is the reason you couldn't answer the question?

A. That wasn't the reason I didn't answer the question.

Q. I beg your pardon?

A. What you just said is a fairly close resume of the auditor's certificate when he shows one.

Q. And he does that when he doesn't make the outside audit which includes writing the debtors and creditors, in this case writing the individual taxpayers on the list, is that not true? If he makes an outside audit, he doesn't have that limitation on his certificate, does he?

A. Not necessarily. It depends on what he finds in the outside vertification. If he doesn't find any exception, he will still go ahead and say, he might suggest independent vertifications as indicated, and the records as presented by the official or individual were found to be accurate.

Q. Weren't you including in your answer an assumption of outside vertification, when that was definitely and expressly excluded?

A. You said he didn't use that. He may use that too. There isn't too much difference between those two, as a matter of fact.

Q. I am quite aware a given auditor might do anything he wanted to do, but my question left out the outside vertification, and I am asking you if there were not times and types of audits that were made from books which incorporated and included, and calculated to incorporate and include no outside vertification, nothing but an audit of the books as such. Aren't there such audits sometimes made?

A. Well, no, because an independent vertification would be finding out from the bank that the balance is on deposit and the balance is owed by the entity to the bank. That possibly would be an independent or outside verification as such, and an auditor should not sign any type

of certificate if he at least doesn't verify the balances on deposit in the bank.

Q. All right. If it will help, suppose there were no bank accounts carried in this particular set of books, my hypothetical question. Is it possible to audit books without making an outside verification?

Mr. Wilkey: May we have it fixed which hypothetical question Mr. Foreman is referring to.

Q. (By Mr. Foreman) Are you confused, sir?

A. No, but you are throwing a question that certainly doesn't exist in modern-day business to any great degree because all businesses use bank accounts. They are required bank accounts, if it is a governmental entity.

Q. Except for verifying the amount on deposit in the bank, which we will call outside verification, are there audits made of books that include no other outside verification except to check with the bank?

A. Yes.

Q. And how long would it take to check with the bank on such a set of books that we have already in our hypothetical question, Mr. Starnes, to determine if the amounts are all there? Would it take longer than 30 or 40 minutes?

A. No, as a matter of act, if you were in the same town where the bank is, an auditor will frequently call the bank if he has permission and the bank knows it is being made, call the bank and ask for it and ask the bank to mail him a letter on his own letterhead giving verification on the information given. If it ties in with the records on the governmental entity, that is sufficient.

Q. That would be as long as it takes to make a tele-

phone call? That would bear on the outside verification needed?

A. Yes.

Q. Let's eliminate all outside verification except the telephone call to the bank, and tell us how long you think it would take to make a book audit with no verification of such a set of books as I have outlined here?

A. Now, that is only the list. Only the list of checks?

Q. No, sir.

A. I am talking about the money coming out of the bank.

Q. It is the tax roll showing assessments, collections, it is the renditions, it is the disbursements, it is the deposits, and it is the ledger sheets.

A. If an audit was made, and certainly a prudent auditor would take exception to start with if he didn't have the supporting vouchers of the bills and canceled checks.

Mr. Foreman: May it please the Court, may I ask that the witness not include what a prudent auditor would do, my not having asked?

The Court: Yes, I will instruct the witness to answer the question asked, and not to volunteer any information.

A. If the person tried to do that, I think that six-months period would be the time required for a fairly sizeable staff.

Q. Meaning about how many people?

A. Oh, six to ten people, possibly, for a one-year period.

Q. And are you available--is the State Auditor available at the request of the Attorney General to make such audits of school districts as the Attorney General might request?

A. It depends on the circumstances, Mr. Foreman. There is actually two independent state offices involved there. One does not have jurisdiction over the other, except in a cooperative manner. The State Auditor is appointed by a legislative audit committee consisting of the Lieutenant Governor, the Speaker of the House of Representatives, two members of the Senate and two members of the House of Representatives. Such appointments are for a year that will end February 15 in the year in which the legislature comes into—

Q. The legislature meets the second Tuesday in January?

A. Yes, but this appointment will run to February 15, the current time, for expiration purposes, to February 15, 1959. The appointment doesn't have to be made on February 15. The State Auditor, as most state officials, continues serving until his successor is appointed by the committee, and the State Auditor takes his orders and follows his duties from the Audit Committee and from the statutes that outline his duties. Now, if state funds are involved, then it is his duty to make such investigation as he considers necessary, report to the Audit Committee, and be guided by their recommendation.

Q. By "he" you mean the—

A. State Auditor. The Attorney General, of course, is a constitutional officer and takes his duties and orders pursuant to the Constitution and to the statutes that have been enacted since the Constitution was written.

Q. Thank you, sir. Now, Mr. Starnes, boiling that down, you mean that if General Shepperd would have asked you to, you would have done it?

A. No, I mean it depends upon the circumstances involved. Mr. Cavness is an extremely cautious and conserva-

tive man, and he doesn't go into anything, any kind of special investigation, without reviewing what is involved.

Q. In other words, he wouldn't want to take part in a political crusade to pull somebody's political chestnuts out of the fire, and if he thought that is what it was, he wouldn't have any part of it?

A. That is exactly what I mean.

Q. And he didn't do that down there for the reason that is what he thought it was?

A. He didn't do it for two reasons. The records were inadequate for us to arrive at any worthwhile conclusion.

Q. By records that were presented, you mean the ones you saw there in the District Clerk's office?

A. Yes, sir.

Q. Did you go down to the Benavides Independent School District offices?

A. Not at that time. I did in the later meetings I referred to later in my testimony. That was in June.

Q. Did you make a detailed examination of the records of canceled checks, tax rolls, and so forth, at the Benavides School District tax office?

A. No, sir.

Q. Will you tell us whether or not there were trucks and truckloads, some five truckloads or more, perhaps a roomful of records, that might have taken a year to go through, there at the offices of the Benavides Independent School District when you were there in June?

A. I don't recall seeing that truckloads of records.

Q. Whether you saw them or not, did you undertake to see them?

A. No, sir, because I was on a special investigation at that time for certain special purposes.

Q. I am not criticizing you for not doing it, Mr. Starnes. I am attempting to establish whether or not you made any investigation to ascertain the availability of voluminous records covering the years 1949, 1950, 1951, 1952, 1953 and 1954. As I understand the answer, that was not your assignment and you were not there to do it? You saw no occasion for doing it, and did not do it?

A. That is correct.

The Court: Mr. Foreman, are we near the end of your interrogation?

Mr. Foreman: No, Your Honor. I will attempt to boil it down at recess and make it shorter.

The Court: Very well. I am going to call a recess at this time. The Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Mr. Foreman: Shall I proceed?

The Court: You may continue.

Q. (By Mr. Foreman) Mr. Starnes, we have talked about two types of audits, one being the outside audit meaning verification of all items by outside checks, and an audit from the books as furnished with only a verification as to bank accounts. Isn't it true that the actual audit and audit practice is a combination of the two, that is, that the—if the audit or the search, the checking

of the books or records, suggests that a certain item ought to be inquired about outside then it is done?

A. Yes, and it also depends on the amount of internal control in the accounting office for the bank, entity, or office.

Q. That brings in a term more familiar to you than to us probably. By internal control, just briefly, auditors mean what?

A. Well, that is where one employee, to be brief and keep it simple, one employee would add up the cash that came in through the day, another employee would add up the receipts that had been written. The total of the cash that had been added up by the first employee should equal the total of the receipts. The one employee would take that money to the bank, another would examine the deposit slip that came back to see if it coincided with the cash receipts.

Q. Internal control means back one employee against another to keep them honest?

A. Yes. The bigger the office, the more internal checks are required or indicated.

Q. Now, I understand. In other words, it is possible to set up a system where there is a perpetual audit by one employee on another?

A. Yes.

Q. That is called brifly and roughly "internal control"?

A. Right.

Q. Mr. Starnes, in checking this, assuming hypothetical audits of the Benavides Independent School District books, assuming that you checked on the tax rolls and found there is not some—an omission of a name that appeared on the complete alphabetical list of taxpayers, that would suggest an inquiry, wouldn't it?

A. Yes, sir.

Q. And it would suggest going to the rendition sheet such as you had, and in the event it did or didn't appear there, further search by the outside verification of that particular item to the original name that appeared on the alphabetical list, wouldn't it?

A. Probably so.

Q. Now, assuming that the auditor is working from the disbursement, or what is a certified list of all checks paid out of the depository bank, that presumably would be the bank's report, the depository bank's report to the Board of Education in that case of a school district, wouldn't it?

A. Yes.

Q. And assuming there appeared to be checks issued to people that might arouse a suspicion as to whether or not such a person actually existed, you couldn't find them or any evidence of work other than the check had been written, no invoices, it would suggest an inquiry as to whether or not such a person was available, an inquiry as to his location, identity, and undertaking from whoever wrote the check or receipt to help you locate that person for an outside verification?

A. All right.

Q. And a good, conscientious, ethical, capable auditor would, in the course of an audit, do such things as a matter of course, wouldn't he?

Mr. Wilkey: Your Honor, I am not objecting to the question at all. It strikes me now, and for a long time, counsel has been on entirely new matter outside the scope of direct examination of this gentleman, which was very limited, therefore we object to the form of the question as leading questions on this topic.

Mr. Foreman: Your Honor, except for the fact that an expert witness is permitted to be led by either side, it might be a valid objection but this is an exception. It is leading a witness who is an expert. We are permitted to lead experts.

Mr. Wilkey: I understand he can lead expert witnesses by hypothetical questions, however, when you are getting on something else, I don't think he is entitled to lead and I think the Court has ruled on that before.

Mr. Foreman: It is my understanding, in my limited experience in the courtroom, even if I had offered this man first and had qualified him as an expert in his field, I could lead him.

The Court: I will permit you to continue to lead him and doing it in the interest of expediency. I think you can complete your examination quicker by leading questions, and I want to aim at that. I will permit you to lead the witness.

Mr. Foreman: I am almost through, Your Honor.

The Court: Very well.

The Witness: Could I have that question read back?

The Official Reporter (Reading): "Question: And a good, conscientious, ethical, capable auditor would, in the course of an audit, so such things as a matter of course, wouldn't he?"

Q. (By Mr. Foreman) Is the question too remote from your recollection now?

A. No, it isn't, if I can clarify one point. Hypothetically, yes. If we are talking about and your question is directed at the work at Benavides—

Q. Hypothetically.

A. Hypothetically, yes.

Q. The next question was going to be, did you undertake, in the work you did there, to discover whether or not any of these people, Government's Exhibits 9 and 10, existed or not, or where they were or where they might be, have their homes. Did you undertake to make any such search or inquiry?

A. No, sir, we did not.

Q. Because you were not called upon to do that in the character of work you were doing, were you?

A. No, sir.

Q. Now, just a few questions about a system of bookkeeping. As an auditor for a school district, tell us in your expert opinion whether or not a statement, invoice for merchandise furnished, or services rendered should be on file before a check is written?

A. That is customary, sir.

Q. And would a careful, honest auditor require it before he would approve the issuance of checks in the absence of any such inventory or invoice or statement?

A. Yes, unless the situation was such that the person furnishing such services had obtained approval of higher authority for some sort of advance for a job or progress. I am thinking about a construction program possibly.

Q. Or authorization by the minutes of the board of trustees?

A. That is what I mean by higher authority.

Q. Tell us whether or not in the making out of a bank deposit statement the mere tabulating on a bunch of checks on an adding machine tape and the tape wrapped around a bunch of checks and handed to some employee to take to the bank would, in your opinion as an expert auditor, be the proper way to send a statement to the bank?

A. You mean send a deposit to a bank?

Q. Send a deposit to a bank?

A. No.

Q. What would be the proper way?

A. Well, the deposit slip should be made out by whoever is required to make out such deposit slips, giving the fund and the indicated governmental entity, Benavides Independent School District, show whatever fund that is a deposit for, the date of the deposit, and depending on the internal control and the support back of that. As all of you know, the deposit slip forms that the banks furnish have a place for a total amount of currency, total amount of change or silver, and then a place for listing checks, and when they say checks they also mean warrants and so on, meaning other than currency or silver. Depending on the internal control in the entity, that detailed listing of checks may or may not be made. The bank will take it without a detail made. That is common practice. If there is no detail anywhere supporting that, then it should be listed all right.

Q. Pardon me. I missed that.

A. If there is no detail anywhere else, it should be on that deposit slip, but if there is a detail in the records in the office anywhere, I am speaking of theoretical accounting records here, then that detail should be on the deposit slip at least. It should be somewhere in the records of the

entity, but it doesn't necessarily have to be on the deposit slip.

Q. And that detailed record should be with reference to each individual deposit as distinguished from a general record showing the receipts of all such checks as may have been sent to the bank?

A. Would you run that—repeat that?

Q. When you say a detail, there should be a separate detail somewhere available for each deposit?

A. Yes.

Q. Then carrying this hypothetical question again, as accounting or auditing practice, would you as an expert tell us whether or not you would consider it good practice to make an entry on a book, a bound volume, each time a check is received in payment of taxes separate from the entry on tax rolls, if immediate should be made each time a payment is received so as to keep a daily cash book or receipt?

A. That would be more adequate. In other words, you are talking about as each check is received, another line is completed in this bound record book?

Q. Yes.

A. And in addition to that, an entry is made over in the tax roll. Yes.

Q. Would it not be better practice to make such an entry in such a book immediately upon opening and receiving such a check?

A. Yes, that would be better than not making it.

Q. Now, as against the practice and policy of making an immediate entry, tell us whether you consider it good bookkeeping practice, Mr. Starnes, to receive an indeterminate number of checks, maybe 20, 30 or 50, running

from hundreds into the thousands of dollars, and leaving them lying loosely on a table, or clipped to various items which any number of people might have access to, clipped perhaps in a tax statement book and left there for hours and days at a time? Would that be good office practice in your opinion as an expert auditor?

A. No, sir.

Q. As a matter of fact, assuming that such a daily entry book had originally been kept and then abandoned, and that the detailing—

A. Did you say "and abandoned?".

Q. Yes, sir. This is a hypothetical question, and that originally the individual—each individual had been described on deposit slips as to the payor, the bank it was on, and the amount, and that practice had been abandoned in favor of simply sending an adding machine tape to the bank, and the practice of keeping checks loosely where they might be available to numerous people and to almost anyone who might have a wish to purloin such checks, if all three of these practices had been adopted deliberately by an individual, it would be almost an indication to an auditor it was a design to steal, wouldn't it?

A. Not necessarily a design to steal because if the person was uninformed who discontinued those practices, he might be doing it just because he was lazy.

Q. Suppose such a person had an adequate staff to have carried on the practice and had for some 17 or 18 years carried on the practice of entering in a cash book, making out the detailed deposit slips and keeping the checks in a locked box until deposited, and suddenly he had switched to the lack of system I mentioned; abandoned the daily entry, abandoned the detailing of the checks on the deposit

slip, and leaving the checks and suggesting to the employees that they be left indiscriminately about the place, it would almost suggest that such a person was attempting to work out a design to steal and cover up his tracks wouldn't it?

A. No. I don't think I could say that.

Q. All right. At any rate, it would be grossly inadequate bookkeeping, auditing, and office management, wouldn't it?

A. It would.

Q. And it would be the very antithesis of what you called a while ago internal control?

A. Right.

Q. It would be almost internal combustion, wouldn't it?

A. It probably would.

Mr. Foreman: No further questions.

8-1934 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Mr. Starnes, while we are waiting for the exhibits to be assembled, if someone after 17 years of careful bookkeeping abandoned the practice of keeping the receipt book and not listing the checks separately, and began a practice, as he did, of leaving checks scattered around helter-skelter, would you draw the conclusion there had been some change in the office routine of the place dictated by other events?

A. Yes, definitely.

Mr. Wilkey: Thank you.

Mr. Foreman: Is that "dictated by other events?"

Mr. Wilkey: Yes.

Mr. Foreman: Oh.

Q. (By Mr. Wilkey) Now, in regards to some of the difficulties of making an audit if taxpayers had been left off of the tax roll, if the taxes were actually paid to the tax collector, would an audit of the deposits in a bank or banks for that matter necessarily determine the shortage or size of a shortage?

A. Well, not necessarily. In other words, the name is left out of the tax roll?

Q. Assuming that.

A. Assuming the name is left out of the tax roll, but the individual or company or concern actually pays the money in and the money is deposited?

Q. No. Assuming that the name is left out of the tax roll and the company pays the money in, the company or companies, to the tax collector and you have information available as to bank deposits, would a check of those bank deposits against the tax rolls necessarily determine any shortage or the amount of the shortage?

A. No, it wouldn't.

Q. Why not?

A. Well, if the name was left out of the roll and the money was paid in but was not deposited, then the net money in the tax roll that was entered in the tax roll could still then tie into the bank deposits and no reference would be available as to money that had been paid in as to the individual whose name was not in the roll.

Q. In other words, in your capacity as auditor and some experience in detecting discrepancies, would you say the omission of names of taxpayers from tax rolls would be a good scheme to cover up a shortage of funds that might not have been deposited in the regular course of business?

Mr. Foreman: Your Honor, it is not my understanding this man was qualified as an expert impartially, but only as an expert auditor and the question is how a man would go about stealing. I think the prosecuting attorney ought to know more about that.

The Court: This was covered on cross examination, and I will allow the Government to go into it on redirect examination.

Mr. Wilkey: We submit, Your Honor, it is expert auditors who make life uncomfortable for expert embezzlers.

The Court: You may continue.

A. The situation that you have outlined there is a more or less elementary type of an operation that is taught into accounting students in audit work.

Q. Would you say it would be the kind of a device that a man with an elemental knowledge of bookkeeping might employ to cover up discrepancies in his accounts?

Mr. Foreman: May it please the Court, just a minute. I have been helped several times by the prosecution to phrase my questions. I would like to respectfully suggest, to my brother of the bar, he probably means elementary instead of elemental.

Mr. Wilkey: I certainly did mean elementary instead of elemental. Would you read the question as rephrased by Mr. Foreman?

The Official Reporter (Reading): "Question: Would you say it would be the kind of a device that a man with an elementary knowledge of bookkeeping might employ to cover up discrepancies in his accounts?"

A. Yes.

Q. A person of more skill in bookkeeping or accounting would use a more refined device?

A. Probably so. You would expect that.

Q. Now, then, if you were making an audit of the governmental entity here, and all of the reports, all of the funds received, were not deposited in the regular statutory depository bank, would that make your task more difficult or easier?

A. It would be more difficult, and certainly if there wasn't something to indicate that from the board, it would call for an examination if you were going into it to determine the true facts. Any auditor would take exception to that practice.

Mr. Foreman: Pardon me. Now, that "practice"— what was the question, the last of the question?

The Official Reporter (Reading): "Question: Now, then, if you were making an audit of the governmental entity here, and all of the reports, all of the funds received, were not deposited in the regular statutory depository bank, would that make your task more difficult or easier?"

Q. I think you have answered it. In checking your disbursements by checks, if you found a list of people of the size here and the number that are listed on Exhibit 9 who are, we will say, hard to locate, would that make your task more difficult?

Mr. Foreman: May it please the Court, if he is asking him something not supported by the records and assuming to this man these men don't exist and he hasn't established it, and the witness hasn't answered he made any undertaking or audit as to whether or not they did or didn't exist—

The Court: Are those Exhibits 9 and 10?

Mr. Foreman: Yes, Your Honor.

The Court: There is evidence before the Court that searches have been made for them, and that they are not found. I don't think we can say that it is a matter—that they are nonexistent is a matter not in evidence. I am not going to comment on how strong the evidence is, but I think the question is supported by evidence in the record.

Mr. Foreman: That isn't—either I ineptly or inappropriately phrased my objection, Your Honor. I am objecting because the witness has not shown any knowledge of that list or what it is, nor has it been established or suggested.

The Court: By his own testimony, he has stated he has no knowledge of it in response to your question.

Mr. Foreman: Then we are objecting to it as not coming

within the purview of an expert witness as phrased. It does not come within the field he is qualified as an expert.

The Court: Objection overruled.

Q. (By Mr. Wilkey) You may answer it.

Mr. Foreman: We interpose the further objection, not meaning to argue with the Court, that that question cannot be answered. He says if you couldn't find it wouldn't it make it more difficult. It would be impossible to answer.

Mr. Wilkey: Suppose we let the witness answer it.

The Court: Yes, the witness may answer it.

A. As I understand your question, it is a hypothetical thing because—meaning that if this list did not exist or if the list had not existed, it certainly would be harder to determine the adequacy or propriety of the payments that had been made to those alleged persons.

Q. In making the argument, Mr. Foreman did in his hypothetical questions sometime at the beginning of his cross examination, say would it be easier to make the audit suggested by Mr. Foreman if you had the canceled checks of the expenditures or microfilm records of the bank showing those same canceled and endorsed checks?

A. Yes, and certainly the canceled checks would be far more adequate than microfilm because it is just harder to read, the microfilm, even when they are blown up because they are somewhat blurred.

Q. But you could do it with microfilm if you didn't have the checks?

A. Yes.

Q. Would it be easier to make the audit suggested by Mr. Foreman if you had the supporting vouchers for the expenditures?

A. That would make it easier from an auditing standpoint.

Q. Would it be easier if the list listed all the taxpayers instead of omitting some of the taxpayers?

A. Yes.

Q. Would it be easier to make the audit suggested by Mr. Foreman if all the money had been deposited in a regular depository bank?

A. Yes.

Q. Would it be easier to make an audit if the names and addresses of the people to whom the checks were made were furnished you?

A. Yes.

Q. All right. Now, then, in the year 1954, Mr. Starnes, did you go into the Benavides Independent School District office there, the office building?

A. Yes.

Q. And did you make an examination of the records in regard to some taxpayers' checks of the Benavides Independent School District, which you had?

A. Yes.

Q. Now, what did you have that you were looking for? Will you tell us that?

A. The Assistant Attorney General, Willis Gresham, had—

Mr. Foreman: May it please the Court, I am objecting to any conversations out of the presence and hearing, or any instructions offered out of the presence and hearing of any

of these defendants as to each defendant, and we do feel—I know he is a layman and not advised of the rules.

The Court: Very well. I wll instruct the witness not to report any conversation with any person unless the conversation was in the presence of one or more of these defendants.

Q. (By Mr. Wilkey) All right, Mr. Starnes, what did you have with you, physically, referring to documents that you were seeking to check, to examine, and seek further information on?

A. We had photostat copies of canceled checks and tax receipts issued by the Benavides Independent School District for 1952, I believe. I know it was 1953, and I believe we also had 1952.

Q. The fall of 1953 and 1952?

A. Right.

Q. Now, then, without detailing any conversations, what did you do in regard to investigating those checks and tax reports?

A. We went to the office of the tax collector in Benavides, and examined the tax roll attempting to find where the people indicated on the receipts and/or the canceled checks, where their names would have been entered in the roll to see that the receipts were properly entered in the rolls.

Q. All right. In regard to the checks for 1953, what did you find on the tax rolls for 1953?

Mr. Foreman: May it please the Court, we ask that he specify the rolls. The rolls are here and they are in evidence and subject to being checks, and we ask that he specify

as to what receipt and what check he has reference to rather than to say, shooting in the dark, something we have no information either by allegation or proof that he has reference to, we ask that he be specific in whatever he purports to testify about.

The Court: Would you make your question more pointed, Mr. Wilkey?

Mr. Wilkey: I believe I can, Your Honor.

The Court: Very well. I suggest it be done.

Q. (By Mr. Wilkey) Can you name any of these tax payers' checks for the year 1953 now?

A. As I recall, there were some ten or possibly 12 different receipts, and I know there was one name Pitzer & Pitzer and Sons, and Texas Consolidated Oils. I believe there was another one and I can't recollect—

Q. In regard to Texas Consolidated Oil and Pitzer & Sons, what did you find in the 1953 tax rolls?

A. As I recall, we could not find their names entered on the rolls in the indicated alphabetical positions that it should have been.

Q. I am going to show you what has been identified as Government's Exhibit 47, being a check of Texas Consolidated Oils, and ask you if you have seen that or a photostat of it before?

A. Yes, I think—

Mr. Foreman: May it please the Court, we have no objection to testimony with reference to the Pitzer & Sons check, but we call the Court's attention to the fact that

at least insofar as I know, there has been no offer or authentication of the Texas Consolidated Oil Company's check, and we are objecting to his asking about that for that reason.

The Court: My notes indicate that it is in evidence.

Mr. Foreman: Texas Consolidated Oils?

The Court: Yes, sir, Plaintiff's Exhibit 47. What do your notes indicate, Mr. Anderson?

The Clerk: Yes, sir, it is in evidence.

Q. (By Mr. Wilkey) You may answer.

Mr. Foreman: Just a minute, please, Mr. Wilkey. Our records were out of place. 47 was in a different place.

The Court: Very well, sir.

Q. (By Mr. Wilkey) Now, in regard to Exhibit 47, Mr. Starnes?

A. This, as I recall, was the check, that is a photostat, that was made available to me and I tried to find where the supporting receipt for it was entered in the rolls, and we couldn't find it.

Q. What is the date of that check?

A. September 28, 1953.

Q. I hand you what has been identified as Exhibit 59-A, being a check of Pitzer & Sons, and ask you if you have ever seen that check before?

A. Yes, sir.

Mr. Foreman: What is the exhibit, please?

Mr. Wilkey: 59-A.

A. Yes, sir, this was another one that we checked on.

Q. All right, sir. Now, then, with 59-A here, it has a tax receipt identified as 59-B?

A. Yes, sir.

Q. Did you or not have with you that tax receipt when you were making your investigation?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. All right, sir. Now, I want to show you Government's Exhibit 50, being a check from the Hagist Ranch dated September 23, 1953, for $1,479.18, and ask you whether or not you have seen that before?

Mr. Foreman: May it please the Court, the witness has stated the only one he knows are Texas Consolidated and Pitzer, and we submit presenting him other checks is in the nature of a leading and suggestive question, leading him by the written instrument, which is not as leading as frequently done, by word, and we object to that practice as leading and suggestive.

Mr. Wilkey: I have two answer to that. I think either one is good. First of all, on every bit of this business about tax rolls and examination of the tax rolls, it was originally opened by the defense on cross examination. On this aspect of the thing, I think I have a right to lead because I am going into something he opened. Secondly, while he may not have a recollection individually, he should have the

opportunity to see whether his memory is refreshed if I show him the check.

The Court: Objection overruled. What is the exhibit, Mr. Wilkey?

Mr. Wilkey: 50, Your Honor.

The Court: Thank you.

A. I don't recall that one.

Q. You don't recall that one. All right. I show you 55-A, being a check of the Gilcrease Oil Company, September 28, 1953, and ask you whether or not you recall this check?

A. Yes, Gilcrease Oil was another one that we checked on.

Q. With the Gilcrease Oil check is Exhibit 55-B, being a tax receipt, and 55-C, being another copy of the tax receipt, I will ask you if you had with you at the time you were making your investigation either one of these tax receipts?

A. Yes.

Q. One or both?

A. I don't recall whether we had both of them, but I had one or the other.

Q. All right, sir. Now, then, I will show you Government's Exhibit 56-A, being a check from Sid and Meyer Katz, September 25, 1953, and ask you if you recall this one?

A. Yes, sir, I had this one.

Q. Now, then, with the 56-A is 56-B, a tax receipt. I will ask you if you had with you that tax receipt?

A. Yes, sir.

Q. There is 56-C, being another receipt or document. Did you have that with you or not?

A. We had some copies of this, but I don't recall whether it was with this specific form.

Q. But you had 56-B, is that right?

A. Yes.

Q. I will show you Government's Exhibit 58-A, Gasoline Production Company, dated September 30, 1953, and ask you if that is one of the checks you had with you or not?

A. I don't remember.

Q. All right, sir. Now, then, sir, on these checks here which you do remember, I wish you would first of all check the alphabetical list of taxpayers for 1953 and see if those checks or those taxpayers are on this alphabetical list? We will start first with the one we first talked about, which was Texas Consolidated Oils. Look in both the rendered and unrendered and see if Texas Consolidated Oil is there in one or the other, and tell us which one?

A. Texas Consolidated Oils?

Q. Is it on the rendered or unrendered section?

A. It is on the rendered.

Q. Now, then, sir, will you go to the tax rolls for 1953 and see if you can find Texas Consolidated Oil in the rendered section?

A. This is Gasoline Production?

Q. Texas Consolidated Oil, Exhibit 47, a check.

Mr. Starnes, in which section of the rendered and unrendered on the tax roll is the taxpayer listed alphabetically?

Mr. Foreman: If it please the Court, I want this audit made by the auditor rather than suggestions made by the prosecuting attorney, if the Court will permit it. He is asking a question now, and he has got another suggestion. I think we can establish in a minute, he can make this audit in even a shorter time than six months.

The Court: I don't want him to make the audit in the courtroom, I am hoping to finish this trial in less than six months.

A. There are only two companies in this particular section that start with the word "Texas." That is Texas Gulf Coast Corporation and Texas State Bank, Trustee.

Q. No Texas Consolidated Oil?

A. No, sir.

Q. Did you look in both the rendered and the unrendered sections? Did you look in both Rolls C and D, to put the question another way?

A. This thing isn't marked too well.

Q. Mr. Starnes, I am sorry. When you began searching for Texas Consolidated Oils, I didn't have the tax receipt that goes with it. Before looking again here, let me show you this Exhibit 48 and ask you if you had this tax receipt with you at the time you were making your investigation?

Mr. Foreman: Again we object to the coaching of the witness. The witness himself has undertaken to say he didn't find something, and the prosecuting attorney, by the preliminary remarks, is correcting the witness and therefore coaching the witness, as to where to find it. The fact that he didn't find something on June 4 and can't find the

same thing now might be of probative weight to the jury of his ability to find something any time.

The Court: Objection overruled.

Q. (By Mr. Wilkey) What is your answer to my question?

A. We searched the roll for the number. It isn't legible very well any more.

Q. As best we can make out, is that Roll C, Page 12, Line 8?

A. Page 12 and Line 8.

Mr. Foreman: That is suggestive to the witness. He hands him a paper and reads it to him and asked him if that is what it is.

Mr. Wilkey: I think we have read that before and agreed what it is, and I ask you to look at it now.

Mr. Foreman: Regardless of what it is, it is the form I am objecting to now, not the substance, and we are objecting to the District Attorney telling him what something is when he is the witness. That is our objection.

The Court: Will you read the question back?

The Official Reporter (Reading): "Question: As best we can make out, is that Roll C, Page 12, Line 8?"

Mr. Wilkey: It is the upper lefthand corner, Your Honor.

The Court: Objection overruled.

Q. (By Mr. Wilkey) Now, then, sir, will you turn to Roll C, Page 12, Line 8 and see if you can find Texas Consolidated Oils. I think C comes before D in this book like it does in the alphabet.

Mr. Foreman: May it please the Court, again for the record we are objecting to the District Attorney coaching the witness as to how or where he uses the book. The witness has testified he went down to search before. The very fact that if this witness could not find Roll C in the book at all, and all the members of the jury could, it would have some weight on the credibility, about his inquiry.

The Court: This is redirect examination and I will permit it, and the jury may consider all of his testimony under all of the circumstances.

Q. (By Mr. Wilkey) Roll C, Page 12, Line 8, sir. Mr. Starnes, I will ask you when you made your original search, were you dealing with the tax rolls in their original condition or a photostat?

A. It was in the original condition.

Q. The original tax roll. Thank you. You have 12-C? Roll C, Page 12?

A. Yes, sir.

Q. Look at Line 8, and what do you find?

A. There is no name listed.

Q. What is the name next above?

A. Augusta Hahl Church, Houston, Texas.

Q. Do you find Texas Consolidated Oils on that Page 12, Roll C?

A. No, sir.

Q. All right, sir, turning your attention to Pitzer & Sons, would you read the upper lefthand notation on the tax receipt of that?

A. Roll C, Page 22, Line 20.

Q. First of all, before going to the tax rolls, would you check Exhibit 225 here, being the alphabetical list, and see if Pitzer & Sons is in the alphabetical list, would you make that check first?

A. Pitzer & Sons is in the rendered list.

Q. All right, sir. Now, will you turn to the indicated portion of the tax roll there, being the one noted in the upper left hand corner, and see what appears?

A. Roll C, Page 22, Line 20. On Roll C, Page 22, Line 20 nothing is entered. The name immediately above that is the Estate or E-s-t. of Clara Driscoll, Corpus Christi, Texas.

Q. Is Pitzer & Sons any place on that page?

A. No, sir.

Q. Turn again to the alphabetical list for Gilcrease Oil Company on the alphabetical list, and see if it is there?

A. Gilcrease Oil Company is in the rendered section.

Q. Look in the upper lefthand corner of the Gilcrease tax receipt and what is that?

A. Roll C, Page 14, Line 9.

Q. Will you look at Page 14, Line 9 for Gilcrease Oil on the tax roll?

A. Roll C, Page 14, Line 9 shows Wichita Falls, Texas. The name immediately above that is Melvin J. Collins Trust.

Q. Will you look and see if Gilcrease Oil is any place on that page?

A. No, sir, it isn't.

Q. I show you Sid and Meyer Katz and ask you first to look in the alphabetical list and see if Sid and Meyer Katz are listed?

A. Sid and Meyer Katz are in the rendered section.

Q. Very well. Will you look at the upper lefthand corner of the tax receipt for Sid and Meyer Katz, and read what you find there?

A. Roll C, Page 20, Line 3.

Q. Page 20, Line 3 for Sid and Meyer Katz.

A. Roll C, Page 20, Line 3, Line 3 is blank. The name immediately above that, which is on Line 1, Edwin L. Cox and J. L. Hamon of Dallas, Texas.

Q. Are Sid and Meyer Katz anywhere on that page?

A. No, sir.

Q. Are they?

A. No, sir.

Q. Thank you. I believe you may have your seat now. Thank you for going through those.

On that day in 1954 when you were looking for these checks and the tax receipts on the tax rolls, do you recall how the tax receipts that you were looking for were numbered?

A. The photostat copies were numbered in a series between 2976, and they had an A prefix up to but not including A-3000.

Q. All right. A-2976 up to but not including A-3000?

A. Yes, they were in that series.

Q. I show you these exhibits which you have previously handled here and ask you what your tax receipt numbers are on those tax receipts?

A. The first is A-2983.

Q. All right.

Q. A-2984, A-2987, A-2989.

Q. All right, sir. In your invesigation of those tax receipts there in the Benavides office, did you discover the carbon copy of these tax receipts or the stub book from which they had been pulled?

A. Well, I found the last receipt in the set.

Q. All right.

A. Which was A-3000.

Q. What were the immediately preceding numbers in that set?

A. The receipts were prepared or glued together with a glue on the edge in series of twenty-five, each starting with 1 through 25. In this instance it was 2976 through 3000.

Q. Are those numbers of those receipts you hold in your hand in that series of 25, the last of which you found?

A. The last receipts.

Q. Are those receipts you hold in your hand in that numbered series of 25, the last of which is of the series you found in that office?

A. No, the A-3000 series wasn't, and had not been used.

Q. That is what I mean, and the preceding 24 attached to A-3000, are those numbers there in that group of 24?

A. Yes.

Q. What series of tax receipts were currently in use in 1953 by the Benavides School District tax collector's office?

A. A review of the records was made, and I couldn't find any number in the A-series. I don't remember the exact number, but it was something less than 1000. As I recall it was 879 but it may have been 789. I know definitely it was below 1000.

Q. The current tax receipts were numbered somewhere below 1000?

A. The ones we found in the book that had been entered.

Q. Those that were numbered below 1000 you found in the tax rolls, is that correct?

A. Yes.

Q. Now, then, on these that you were looking for, and which you found, the pad was the last one A-3000 were the carbon copies, the fourth copy of the tax receipt left on the pad?

A. No, sir, I don't believe it was.

Q. Did you find those carbon copies, the fourth copy of these tax receipts you were looking for and some of which you hold in your hand, anywhere in the office?

A. I don't recall that I did.

Mr. Wilkey: No further questions.

8-1958 RECROSS EXAMINATION

Q. (By Mr. Foreman) Isn't it true, Mr. Starnes, that you don't recall whether you did or not?

A. Is that your question?

Q. More or less, yes, sir.

A. That I don't recall whether I did or not what?

Q. The last preceding question that was asked you, you said I don't recall that I did, didn't you use that? Wasn't that your answer to the last question before I commenced examining you? What was that question you don't recall that you did?

A. That we couldn't find the fourth copy. We didn't find a fourth copy in the office, to the best of my recollection.

Q. Isn't it true you don't recall whether you did or not. That is my question.

A. Well, I don't recall that we found it.

Q. Do you recall that you didn't find it?

A. Well, I guess I do. I am just trying to straighten out your question.

Q. I will ask it again. Do you recall whether or not you found the fourth copy of tax receipts A-2983, A-2984, A-2987 and A-2989? Do you recall whether or not you did?

A. I did not find them, to the best of my recollection.

Q. Well, do you mean by stating to the best of your recollection that you don't recall whether you did or not?

A. I don't believe that I did.

Q. Do you have any idea? Can you testify affirmatively under oath that you didn't?

A. No, I can't.

Q. Your answer is, then, that you don't know whether you did or not, isn't it?

A. Yes.

Q. Thank you. Now, Mr. Starnes, with reference to those—I will ask you in one question rather than stringing them out, Sid and Meyer Katz, Gilcrease Oil Company, Pitzer & Sons, Gasoline Production Company, Texas Consolidated Oils, about which Mr. Wilkey just asked, the only place you looked to attempt to determine or ascertain whether or not that appeared on the tax rolls for the year 1953 was at the page and line you read or what you read from the tax receipt, isn't it?

A. No, sir.

Q. Where else did you look?

A. In each instance, the page and line number shown would have been out of order, alphabetically speaking, so we turned over and checked into the roll in the proper

alphabetical place for that particular name, and we checked there and also didn't find it there.

Q. You looked on two different lines on two different pages as regards each item?

A. No, we looked in the supplement and also looked at the—any place where it might have been entered in error or had been entered after someone had discovred an error had been made is what I am trying to say, at those two specific places plus the other rolls where it could also have been entered erroneously.

Q. You looked at the current rolls, the supplemental rolls and the rendered and unrendered, and the receipts, and where it would normally appear alphabetically?

A. Yes.

Q. But you did not take it page by page, item by item and attempt to ascertain whether or not it appeared on the tax roll or not at any place?

A. No, sir, we did not.

Q. But had you been making an audit as distinguished from this cursory preliminary examination, you would have checked for such items at Pitzer & Sons, Gilcrease Oil, Gasoline Production, Sid and Meyer Katz, Texas Consolidated on every page?

A. Had we been duty bound to come up with a yes or no answer to that, we would have done that.

Q. And when you stated a while ago where it might have been entered inadvertently, you did not mean that by mistake. You mean where it might have been entered inadvertently and the mistake detected by the employee of the company, that is what you meant by the supplementary roll?

A. Right.

Q. You are not now testifying that at some place or other in the tax roll for 1953 each of these items do not appear, are you?

A. That is right.

Q. Now, this hypothetical question. Assuming that an individual in charge of the Benavides Independent School District tax office had intentionally mis-made the tax rolls or left off Pitzer & Sons, Consolidated Oil, Sid and Mayer Katz, Gasoline Production, and had desired to conceal his wrongdoing, the last thing that he could have done would have been to take away the alphabetical receipt as to the taxpayers and the amount each owed? Wouldn't that have been the better act of discretion on the part of such person that might have been wanting to evade the watchdog eyes of the auditors?

A. There are a multitude of ways by which someone attempting to do this, by which they could accomplish that and without—I mean, they could have did it in a number of different ways, some easy, some hard.

Q. And it could have been done—one of the things such a person should have done, if he wanted to avoid detection, would have been to conceal the list of tax payers, burned it or something, wouldn't it?

A. Well, it depends on the circumstances.

Q. Well, right here before this jury you detected the fact that there was, from a record left or found or produced from the tax collector's office, that Pitzer & Sons, Texas Consolidated Oil, Sid and Meyer Katz, Gilcrease Oil, that there was a record or showing they were taxpayers in the amount they showed for that year? You found that in front of the jury a while ago?

A. Yes.

Q. Presumably had an audit been made, that could have been found by any other auditor the same way you found it here?

A. Right.

Q. It surely was careless, or almost a criminal oversight on the part of the thief, whoever he was, if he was a thief to have left that great big old track there?

A. Yes, it was.

Q. Another thing. This has not to do with a depository bank, but with any bank account. Would it not be necessary, Mr. Starnes, before you could determine whether or not funds went into any school bank account to have before you the ledger sheets and some other deposit slips, canceled checks of a—of each bank account of the School District?

A. It would have been easier, yes.

Q. Before you would know whether the money went into such an account, you would need the ledger sheets of all accounts, wouldn't you?

A. Yes.

Q. Did you check to see how many bank accounts the Benavides Independent School District had, in your checking?

A. Well, we had this list that I made, or I have this list. As I recall, there were about thirteen accounts.

Q. All right, sir. Suppose you briefly read them and slowly—not too slowly, but read them distinctly so we may have these thirteen at one point.

A. Benavides Independent School District of course is tied in and made a part of each of these. Namely, Building Fund 1950; Veterans Basic School Fund; Bond and Coupon Paying Account; Local Maintenance B Fund—

Q. Local Maintenance?

A. —Local Maintenance A; Benavides Building No. 3; Interest and Sinking; Building Fund Series 1949; Freer Building Fund; Freer Building Fund No. 1; State and County; Freer Local Maintenance Fund; Freer State and County and Local Maintenance.

Q. Thank you, sir. That is all? Freer Local Maintenance after Freer State and County? Is that the name of the account?

A. On my list I made on February 13, 1954, the last one I have is Local Maintenance.

Q. It doesn't have Freer?

A. It doesn't have. I am not sure at this time whether this is Freer Local Maintenance or that was a general maintenance.

Mr. Foreman: Thank you. That is all.

8-1965 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Mr. Starnes, I have two questions here in regard to this list Mr. Foreman asked you about, the alphabetical list of taxpayers. Would it have served a very useful purpose for someone attempting to cover up irregularities to burn this list if a duplicate copy existed in the office of Thomas Y. Pickett?

A. If the person knew the other copy was in existence, there wouldn't be any point in destroying that one.

Q. Would it have served a useful purpose for someone covering up his irregularity if he had removed the individual sheets of the taxpayers from this bundle here?

A. What bundle here?

Q. Exhibit 211 of which no copy exists except this one here.

Mr. Foreman: May it please the Court, that hasn't been testified, and he is asking his question on a basis of something that is not in the record, unsworn testimony, that is, as to whether another copy exists anywhere or not. I am quite certain that is not in this record.

Mr. Wilkey: Your Honor, it is a hypothetical question, and I think it will be shown while individual copies of these things exist—

The Court; How far can we go with hypothetical questions? Is this an accounting question?

Mr. Wilkey: It is precisely the same type question he asked first about this alphabetical list, Your Honor.

Mr. Foreman: Even a hypothetical question must be limited to the facts in evidence, Your Honor.

The Court: I will sustain the objection.

Mr. Wilkey: Very well. No further questions.

Mr. Foreman: That is all, Mr Starnes. Thank you very much.

The Court: It is now ten minutes to five. The jury is reminded of the instructions previously given, and court is adjourned until 9:30 tomorrow morning.

9-1967 MORNING SESSION—JUNE 5, 1957

The Court: The Government may call its next witness.

9-1967 GORDON HUMPHREYS,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

9-1967 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?
A. Gordon Humphreys.
Q. Where do you live, Mr. Humphreys?
A. Dallas.
Q. By whom are you employed?
A. Thomas Y. Pickett & Company.
Q. What does Thomas Y. Pickett & Company do?
A. Evaluation engineers for oil and gas properties primarily for tax issuance.
Q. What do they do in performing the function as evaluation engineers for taxation purpose?
A. Value the property within the taxing jurisdiction for taxation as of January 1 of each year or each year you are working with.

Mr. Foreman: May it please the Court, we get in an occasional word. May I ask that the witness be advised to speak louder?

The Court: Yes. I ask that you speak louder, clearly and distinctly. It is important everyone in the courtroom hear you.

Q. For whom does the company work or with whom are your contract relations?

A. With the taxing jurisdiction.

Q. All right. Now, what do you do for Thomas Y. Pickett & Company?

A. I am tax accountant. Each one so employed has several contracts or certain contracts. It is divided up that you coordinate or look after.

Mr. Foreman: May it please the Court, he starts out all right, but he falls off so softly.

The Court: Mr. Humphreys, you have a feeling a lot of people seem to have. You let your voice fade off on the end. We think that on the end is just as important as that in the beginning, so we want you to keep your voice sustained.

The Witness: All right, sir.

Q. Do you work in Dallas, or do you work out in other counties in the state?

A. Both places.

Q. All right, sir. Have you ever been in Duval County?

A. Yes, sir.

Q. Was it in connection with the contract for the company with some governmental entity in Duval County?

A. Yes, sir.

Q. Were you down there in 1952 or 1953?

A. Yes, sir.

Q. And what did you do down there in Duval County, what functions did you perform?

A. In working the contract for the taxing jurisdiction, we went down there around the first of the year and made a check, checked the personal property, the rigs, the oil equipment, and so forth, and then after the Board of Equalization date had been set, we went back at that date and assisted the school authorities in holding the Board of Equalization hearing. We act in an advisory capacity only.

Q. What school authority was this?

A. It would be the trustees of the School District.

Q. Which district?

A. The Benavides Independent School District.

Q. Do you know Oscar Carrillo?

A. Yes, sir.

Q. Have you met D. C. Chapa?

A. Yes, sir.

Q. Did you see them down there on your trips in 1952?

A. At the Board of Equalization hearings?

Q. At any time.

A. I don't know.

Q. In 1953, did you see them there?

A. I don't know.

Q. Have you seen them on trips down in Duval County?

A. Yes.

Q. To your knowledge, who is Oscar Carrillo or who was he in 1952 and 1953?

A. Secretary of the School Board.

Q. Did you have business dealings and conversation with Oscar Carrillo from time to time?

A. Occasionally.

Q. Do you know who was Mr. D. C. Chapa in the years 1952 and 1953?

A. He was tax assessor.

Q. Did you have any conversation or business dealings with him in those years?

A. Occasionally, yes.

Q. I want to show you what has been identified here as Government's Exhibit 211 and ask you to pull out the top one of those individual sheets and tell us what those individual sheets were and how they were prepared?

A. Those are the rendered renditions, inventory. Those are made by the taxpayers to the taxing jurisdiction.

Q. All right, sir. By whom are they prepared?

A. By the taxpayers themselves.

Q. And they are submitted to whom?

A. To the tax assessor.

Q. Does your office ever handle them?

A. Yes, sir.

Q. In what stage did you get those individual taxpayers' renditions?

A. After the Board of Equalization hearing has been held, we take the rendered renditions and check them against the ownership lists, those interests that have been rendered or marked with the evaluation that has been fixed by the Board of Equalization. Then, after all of the rendered renditions have been checked against the ownership lists, those interests that are left on there that have not been rendered are the unrendered.

Q. I see. The tax roll is divided normally into rendered and unrendered sections, is it not?

A. Yes.

Q. What do those individual inventory sheets represent? They represent the—

A. The rendered.

Q. All right, sir. After you get those individual sheets from the taxing authority, what do you do with them?

A. After we have checked those against the ownership lists and have prepared the unrendered from those that haven't been rendered, they are then typed on what is called a final order and minutes of the Board of Equalization hearing, and the rendered is typed first and then the unrendered, in order. They have been arranged alphabetically. They were typed in order listing the taxpayers' names, and opposite the name the total of that rendition.

Q. In what order are those sheets arranged?

A. Alphabetically.

Q. Leaving the unrendered roll here, Exhibit 211, for a minute, I will show you what has been identified as Exhibit 212—correction—I have 212 here, and ask you what these are?

A. These are the unrendered inventories that have been prepared from the ownership lists and those interests that are not rendered.

Q. Who prepares the unrendered, individual inventory sheets for the taxpayer?

A. We do.

Q. Where do you do that work?

A. In our office in Dallas.

Q. After those individual sheets are prepared, in what order are they arranged?

A. They are arranged alphabetically.

Q. After you have prepared or arranged the rendered list there, 211, and the unrendered, 212, what do you do with those individual inventory sheets?

A. They are typed to the final order.

Q. All right.

A. And then the rendered and—they are balanced, the final order balanced against the renditions, rendered and

unrendered, and then the rendered and unrendered renditions, a copy of the final order are forwarded back to the tax assessor's office. The original of the final order goes to the secretary of the school board, and we keep a copy for our files.

Q. Then what you have in your lap and those you just had are returned to the tax assessor-collector's office?

A. That is right.

Mr. Foreman: May we ask that he not lead the witness? We do not object to the testimony.

The Court: It is suggested counsel not lead the witness.

Mr. Wilkey: Yes, Your Honor. I will try to refrain. I was attempting to summarize as I understood his testimony.

I show you Government's Exhibit 225 and ask you what that is?

A. This is a copy of the final order and minutes of the Board of Equalization hearing.

Q. All right, sir. What does that contain with reference to the rendered and unrendered property of the taxpayers?

A. It contains a listing of the rendered renditions in order opposite each taxpayers' name, the total of that rendition and a listing of the unrendered renditions in the same order.

Q. Turning to the rendered list of taxpayers there—

A. Sir?

Q. Turning to the rendered list of taxpayers there over two or three pages, from what source are those names obtained when they are typed?

A. From the rendered renditions.

Q. In this case, this is for what year, sir?

A. 1953.

Q. All right. Would it be true or not that the alphabetical list of rendered is obtained here from the individual inventory sheets for 1953 which you previously had?

A. It would be true.

Mr. Foreman: We object to the nature of the question, not the testimony itself, but it is leading and suggestive.

The Court: Would you read the question?

The Official Reporter (Reading): "Question: All right. Would it be true or not that the alphabetical list of rendered is obtained here from the individual inventory sheets for 1953 which you previously had?"

The Court: Objection sustained.

Q. (By Mr. Wilkey) What is the connection between these sheets here, 211, and the alphabetical list of rendered property which is on that document you have in your hand?

A. The listing here is taken from the renditions.

Q. What is the connection between the unrendered list of property holders or taxpayers you have in your hand and Exhibit 212, the individual inventory sheets?

A. The unrendered listings were taken from those renditions.

Q. Now, then, in the preparation of the tax rolls, what is the connection between the individual inventory sheets of the rendered and the individual inventory sheets of the unrendered taxpayers?

A. I don't believe I understood the question, sir.

Q. What is the relation to them in the connection between them, if any, in the preparation of the tax rolls?

A. The tax assessor prepares his roll using the renditions, rendered and unrendered.

Q. Could you explain that a little more. You say that he prepares it. How? Just how is the tax roll prepared?

A. I have never prepared one myself, but he would take that I am sure—

Mr. Foreman: Pardon me. We object to hearsay or conclusions of the witness.

The Court: Objection sustained.

Q. (By Mr. Wilkey) Does Thomas Y. Pickett Company sometimes prepare tax rolls?

A. Yes, sir.

Q. In connection with the company there, and the work you do, are you familiar with the method of preparing the tax rolls?

Mr. Foreman: May it please the Court, unless Thomas Y. Pickett prepared the Benavides Independent School District tax roll—

The Court: I will let him answer this question if he is familiar with it.

A. In the preparation of the rolls that are written up there, the rendered renditions are used in writing the rendered roll. The unrendered renditions in the unrendered roll.

Q. By rendered and unrendered, what do you mean?

A. The voluntary renditions and the ones that have not been rendered.

Q. There in evidence, these exhibits that you have, what do you mean?

A. I don't recall these numbers, 211 and—

Q. When you are referring to the rendered and unrendered renditions, were you referring to any of these things here that you have been shown?

A. Yes, sir, to the rendered here and the unrendered here (indicating).

Q. All right. You referred a while ago to the ownership list. What is the ownership list?

A. It is a—an ownership list for each of the oil and gas leases located within the taxing jurisdiction, where such can be obtained.

Q. All right, sir. What do you do with the ownership list?

A. The values that have been fixed by the Board of Equalization on each of these lists is distributed on the ownership list according to the interest shown under each of the leases.

Q. Do you retain the ownership list, or do you send it to the taxing authority?

A. We retain the original and a copy is sent to the tax assessor.

Q. Incidentally, back to Exhibits 211 and 212, the rendered and unrendered individual inventory lists, does Thomas Y. Pickett & Company retain any copy of the rendered individual sheets here?

A. No, sir.

Q. Where do you send them?

Mr. Foreman: I can't hear you.

A. No, sir.

Q. Back to the ownership list—I don't want to duplicate my question. You stated they were sent where?

A. A copy is sent to the tax assessor's office.
Q. All right, sir. I show you here—

Mr. Foreman: What did he say, a copy?

The Witness: A copy, yes.

Q. Where is the original retained?
A. In our office.

Mr. Foreman: Pardon me. Is that the ownership list or the rendition?

Mr. Wilkey: Talking about the ownership list.
I ask you what this document I hand you here is (tendering to the witness)?
A. This is the original of the ownership list.
Q. All right, sir. What year is this?
A. 1953.
Q. For what taxing entity?
A. That would be as of January 1, 1953.
Q. For what taxing authority?
A. The Benavides Independent School District.
Q. Now, then, to whom did you transmit this in 1953?

Mr. Foreman: May it please the Court, I have no objection if this witness transmitted it, but he has not thus far testified he did or that it was transmitted, and until he has we object as leading and suggestive, and the objection is hearsay unless he did it himself.

Mr. Wilkey: He testified, Your Honor, to the customary practice. I may have skipped a question in the line of sequence.

What did you do with this in 1953?

A. The duplicate book was sent to the tax assessor's office.

Mr. Foreman: We all know what he is talking about, but the record doesn't reflect there. Is this going to be identified? If so, let's get this so if I ask about it it will be tied to this.

Mr. Wilkey: It has not been identified, but we can have it identified.

The Court: I suggest it be done.

(Document tendered to the Clerk and marked Government's Exhibit 230 for identification.).

Q. (By Mr. Wilkey) Referring to Exhibit 230, with the nice bright yellow sticker on it here, now what was done with this ownership list in 1953?

A. The duplicate of this was forwarded to the tax assessor's office.

Q. To whom did you transmit it?

A. To Mr. Chapa.

Q. All right. On this first sheet here, does your signature appear thereon?

A. Yes, sir.

Q. Is there another signature thereon?

A. Yes, sir.

Q. Whose signature is that?

A. Mr. Chapa's.

Q. All right.

Your Honor, we offer in evidence Government's Exhibit 230.

Mr. Foreman: We have no objection to it. I would like to, for the purpose of objection, request for limitation as to its admissibility, ask a question or two, Your Honor.

The Court: Now, or on cross examination.

Mr. Foreman: Right now.

The Court: Very well, you may.

9-1981 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) When you say it was sent to Mr. D. C. Chapa, did you send it or did you just assume it was sent to him?

A. I saw that it was sent.

Q. By that, did you see it addressed? Do you know to whom or how it was addressed, of your knowledge?

A. No, sir, I didn't actually—

Mr. Foreman: Then, as to it being sent to D. C. Chapa, we ask that the jury not consider it, and we ask that it be limited in its applicability in evidence to D. C. Chapa.

The Court: Well, the jury is instructed that they may consider all of the testimony concerning the matter including the answers to questions asked by Mr. Foreman. I think it goes to the weight of the evidence.

9-1982 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Wilkey) Now, then, what part of the alphabet there does Exhibit 230, which is now in the hands of the jury, cover?

A. A to L.

Q. This document you have in your hand, what part of the alphabet does this cover?

A. M to Z.

Q. Is it the last half of the document in the hands of the jury here?

A. Yes, sir.

Mr. Wilkey: I don't think it necessary to identify or offer this part in evidence unless counsel wishes to do so.

Mr. Foreman: Only for the purpose of possible identification. I would like it marked 230-A and B. There are two volumes of the same thing.

The Court: Very well. They will be so marked. The first volume is A to N?

Mr. Wilkey: A to L. No further questions, Your Honor.

9-1982 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Humphreys, is all of the work that is done by Thomas Y. Pickett, or was done by Thomas Y. Pickett in the years 1952 and 1953 for the Benavides Independent School District, done by you personally?

A. No, sir, I didn't personally do all of the work.

Q. I understood in outlining how the Thomas Y. Pickett Company functioned, that each of its tax accountants would have certain clients?

A. Certain contracts, yes, sir.

Q. Was or not the Benavides Independent School District, insofar as the Thomas Y. Pickett Company was concerned, your contract?

A. Yes, sir.

Q. Then whatever was done by Thomas Y. Pickett pursuant to its contract for the Benavides Independent School District for the years 1952 and 1953 was done under your supervision and direction, and you were responsible for its being done?

A. Yes, sir.

Q. And I believe you stated all of that work was done in Dallas?

A. All with the exception of the field check and the holding of the Board.

Q. Please, sir? I got field check, but I missed every word you said after then. If you will keep your voice up.

A. I am sorry. All with the exception of the field checking and our attendance at the Board of Equalization hearing to assist the school.

Q. Just briefly, please tell us what field checking consists of? First I will ask you, are you the one who did the field checking in 1952 and 1953 for the Benavides Independent School District?

A. Yes, sir, with a man with me. Two of us.

Q. At any time the other person was with you, you were likewise present with him?

A. Yes, sir.

Q. And what was his name?

A. I don't recall, sir, who was with me at the time.

Q. You would take different employees or agents, representatives of Thomas Y. Pickett, with you at different times?

A. Yes, sir.

Q. And how many such field checking trips did you make, first during the year 1952?

A. In total, or just with reference to this one?

Q. I am not attempting to tie you down, but simply to get a general idea. Did you make one, ten, or how many did you make and how long did you remain on each trip?

A. For every contract that you had, you would go into the field and make a field check, and the length of time would vary according to the production and how big the fields are.

Q. The length of time would vary with the production?

A. According to how big the production and the fields are in that particular jurisdiction.

Q. Do you mean by field, oil fields?

A. Yes, sir.

Q. Then you did go out into the oil fields to determine where production was?

A. To check—this is a personal property check. You check for rigs, new equipment, and such as that.

Q. Well, now, on my questions, they all have to do only with the Benavides Independent School District, and it will shorten matters if you would just tell us how long it would take you—first, how many fields are there in the Benavides Independent School District? Are there several?

A. There are quite a few, yes, sir.

Q. A dozen or more, or 20 or 30?

A. Considerably more than that.

Q. What, in your best judgment, is the number, within 25 or 10?

A. Within 25, I would say there are at least 75 fields.

Q. How long did it take you to cover those in Benavides in the years 1952 and 1953?

A. I just don't recall, sir, how long. It would depend on the weather, getting around.

Q. Do you recall how long it would take you?

A. Sometimes, if you didn't have new rigs or anything to get, you could get around in three or four days.

Q. If you had some other rigs?

A. It might take a week.

Q. You would make one of those every year?

A. Around the first of the year.

Q. It wasn't necessary to go into the field to check mineral interests? You go to the County Clerk's office?

A. We get production figures from the E.B. Report from Austin.

Q. The Education Board?

A. No, sir. E. B. It is the Railroad Commission form they use. It refers to ending balance. It is a record of the production for each well. They are usually—well, they always are in Austin, all of the districts, and each Railroad Commission district has a field office.

Q. Field notes?

A. Field office, and we could—the production could be obtained from either of those two places, in Austin or in the field notes.

Q. Did you base the evaluation that you made on production or on oil in place unproduced?

A. Well, in the preparation of the schedule, both factors would be taken into consideration.

Q. What schedule?

A. The schedule used for putting the fields in the taxing jurisdiction in proper relation to each other.

Q. Well, how then did you get the information, if there was fields and oil in place but no production, therefore

no ending balance, therefore no report to the Railroad Commission?

A. You would just have to make an appraisal of the field.

Q. Do you ever do that?

A. No, sir, not I personally. I am not an engineer.

Q. Did Thomas Y. Pickett have engineers?

A. Yes, sir.

Q. Do you know any of them that ever made such appraisal or estimate for oil in place where no production was had or being had?

A. Speaking of Benavides?

Q. Yes, sir.

A. No, sir, I don't know of any.

Q. Now, you, as I understand, would compute whatever had been produced in a given year. That would be used as a basis of computation of taxes for the owner of that year?

A. The four quarters of the prior year is used in arriving at what is the taxable value of a piece of property as of January 1.

Q. In other words, you had a valuation on it originally, and if you had depletion, you would reduce or if production would increase, would you assume the value of the land increased? Well, regardless of that, would Thomas Y. Pickett use the same mimeographed schedule except for changing the names of the field within the taxing authority for all of its various customers, not only the Benavides Independent School District but all other districts, whether common, school, independent, county or otherwise, that subscribed to Thomas Y. Pickett's services?

A. No, sir.

Q. You had a separate schedule for each taxing authority?

A. Each taxing authority, the schedule was set up separately. Some might conform and some might be per barrel schedule and some per well.

Q. You mean they might conform as regards all Thomas Y. Pickett clients?

A. I mean one taxing jurisdiction might be using a per barrel schedule, but it wouldn't be the same one the other one had. It would be worked up for that particular jurisdiction.

Q. I am attempting to make allowance in my question for that when I said except for the individual fields. Do you run off these, mimeograph them, for all of your customers and then fill in certain items, and how many copies do you have to make or do you make customarily at Thomas Y. Pickett on a schedule for a given authority such as the Benavides Independent School District?

A. I just wouldn't remember or recall.

Q. Sir?

A. I wouldn't recall, Mr. Foreman.

Q. Would it be as many as three or four or five?

A. More than that.

Q. Twelve or 15?

A. No, probably within 25 I would say 50 or so.

Q. And what do you with all of these 25 or 50 copies?

A. At the Board of Equalization hearing, we would set them on the table where the taxpayers were for the benefit of any taxpayer that wanted a schedule, they could have reference to it.

Q. So that he could compare or they could compare their client's taxes with other owners in the same area?

A. So they could—that might be one reason they would want one, but usually it would be to work up their own properties.

Q. Now, that was prepared from papers on file in your office, and prepared in Dallas?

A. Yes, sir.

Q. The only occasion for going to Benavides was to make a field check for any new surface construction or new rigs, is that correct?

A. That, and assist with the Board of Equalization hearing.

Q. When did the Board of Equalization meet and for how long?

A. It met at different times every year, whenever the school authorities decided they wanted—could hold the hearing, and it lasted for one to two days, usually one.

Q. Isn't the Board of Equalization fixed by law as to certain dates in April?

A. They—

Q. I withdraw the question. Isn't it held customarily in June or July?

A. Customarily, yes, sir.

Q. And you would be there then for the field check and for the Board of Equalization meeting for perhaps two days, isn't that correct?

A. Yes, sir, usually one, sometimes two.

Q. And are there any other—would you please indicate here from these various exhibits—

A. I am sorry, I didn't hear you.

Q. Would you indicate here which of these items are prepared in Dallas by the Thomas Y. Pickett Company? I have reference to Government's Exhibit 211, which is this loose-leaf package tied with a string, which has, among

other things, inventory of property, Government's Exhibit 210, which is an alphabetical list of rendered and unrendered taxpayers, the amount of their taxes, typed into a mimeograph form of minutes of the Board of Equalization. This is all one question. The railroad's renditions marked here 213 and 214. Now, are any of those prepared in the offices of the Thomas Y. Pickett Company in Dallas, Mr. Humphreys?

A. Yes.

Q. Which? Are they all prepared there?

A. No, not all.

Q. Which are prepared there? 230?

A. 230.

Q. 210?

A. 210, yes, sir.

Q. Is 211?

A. No, sir.

Q. And likewise 213 and 214 are not?

A. They are.

Q. They are prepared there?

A. Yes.

Q. Oh, I see. Then of the group to which I had reference, all are prepared there except 211?

A. Yes, sir.

Q. Can we account for this?

Mr. Wilkey: I merely asked him to pull it out because the top sheet is a blank sheet.

Mr. Foreman: Is there any objection to putting it back?

Mr. Wilkey: It should be replaced.

Q. (By Mr. Foreman) Are there any other writings,

lists, records, computations other than the schedule you have mentioned as being mimeographed for use at the Board of Equalization meetings, prepared by Thomas Y. Pickett, or were there any such prepared in the years 1952 or 1953 other than the—that is, of course, the corresponding exhibits for the other years which might not be here. This, I believe, is for the year of 1953—except for the corresponding item for the other year, were there any other items prepared in accordance with your agreement or contract other than what I have shown you here?

A. Yes, sir.

Q. What?

A. There is the appraisal book which lists the leases and upon which the computations are made that — in arriving at the valuation of the lease as of January 1.

Q. Is that furnished or delivered, and a copy of it, to the Benavides Independent School District for either of these years, or is it a record kept altogether completely in your office in Dallas?

A. It is a record that is kept in our office in Dallas.

Q. Is there any other record kept in your office in Dallas other than copies of these exhibits here in their corresponding number for different years, and the appraisal book—that is what you called it?

A. Yes, sir.

Q. Are there any other records kept there?

A. None that I know of.

Q. Are there any other records delivered to the Benavides Independent School District except those and the corresponding number represented here by Government's Exhibits 210, 211, 230—no, I take out 211 because that is not prepared, 210, 230, 213 and 214, is there anything else

that—and of course the schedules mimeographed that you have detailed?

A. No, sir.

Q. And does anyone from the Benavides Independent School District assist you in making what you call the field check to determine any new rigs or other improvements of taxpayers on their leases in the oil field?

A. No, sir.

Q. And do any of the—well, as I understand it, all of the detail of the typing, preparation, delivery and presentation to the School District of each of these items represented by Government's 210, 230-B, 214 and 213 are prepared by office employees, stenographers, or workers or clerks in the offices of Thomas Y. Pickett of Dallas, Texas?

A. That is right.

Q. And none of it is done in the field by you or through your direction?

A. I am sorry. I lost track there. None of this work is done in the fields?

Q. Yes, sir.

A. No, sir.

Q. None of it was done in the offices there, customarily done at the offices of the Benavides Independent School District by anyone?

A. No, sir.

Q. That prevailed, the practice of doing all the stenographic work, preparation of these various lists represented by 210, 230, 213 and 214 was carried on for how many years at the offices of Thomas Y. Pickett, to your certain knowledge? When did you start doing that that you know of?

A. I don't recall exactly, Mr. Foreman, but four years that I know of.

Q. Four years now, or four years before 1952?

A. Before 1952.

Q. Back to 1948 and 1949?

A. No, this way. 1952, '53, '54 and '55.

Q. You know it was done all those years?

A. Yes.

Q. Did you go to work in 1952?

A. No, sir, I went to work considerably before then.

Q. With Thomas Y. Pickett?

A. Yes.

Q. Can you tell us the practice in 1949, 1950 and 1951?

A. No, sir.

Q. You did not have this contract at that time?

A. No, sir.

Q. You took over the Benavides Independent School District contract in 1952?

A. I am not exactly sure. 1951 or 1952, somewhere along in there, and I didn't have it prior to that, I am almost certain.

Q. Ever since you have had anything to do with the Benavides Independent School District contract for Thomas Y. Pickett, all of the lists of taxpayers and all of the tax lists have been prepared at Dallas and never at Benavides, is that correct?

A. That is correct, sir.

Q. Thank you, sir. Now, would you give us the names of the employees of the Thomas Y. Pickett Company who, if you know, prepared these various exhibits for the years 1952 and 1953 represented by Government's Exhibits 210, 230-B, 213 and 214?

A. No, sir. I would have to check and see.

Q. You all have a large office force there?

A. Yes, sir.

Q. About how many?

A. About 30 people.

Q. And it was some one of those 30 employees at Dallas who did it, or more perhaps?

A. Yes, sir.

Q. Now, was the—do you have a copy of the contract between the Benavides Independent School District trustees and Thomas Y. Pickett?

A. No, sir.

Q. You have a standard contract for all such districts, Mr. Humphreys? Do you have the same contract? Has Thomas Y. Pickett a form of contract, or do they vary as to terms or provisions?

A. They vary as to terms. I have nothing to do with the contracts, but I know they are not all the same.

Q. Is it not a policy of the company to do all this work in Dallas so as to avoid the possibility of someone in a tax office leaving off someone off the tax roll?

A. I'm sorry—

Q. Is a part of the service rendered by Thomas Y. Pickett to assert a certain amount of internal control so as to make sure an independent agency prepares the information for the tax roll? Is that one of the justifications of the work being done by you rather than by local people in one of the taxing agencies?

A. The justification in every place we work, we feel, is that we are qualified and that most assessor's offices are not to evaluate oil and gas properties.

Q. And you have concentrated the specialists in that in Dallas, and that is why you don't use local people to do it?

A. Yes, sir.

Q. Did you, in connection with the Benavides Independent School District, pay any of their employees to do any of the work on any of these lists represented by Government's Exhibits 230-B, 210, 213 or 214?

A. Do any of the work on those?

Q. Preparation of the list?

A. No, sir.

Q. Did you pay anyone in connection with the Benavides Independent School District as an employee of the District to do any work for Thomas Y. Pickett at Benavides?

A. Yes, sir.

Q. Who?

A. Mr. Heras was paid to write the tax rolls.

Q. Write what tax rolls?

A. The Benavides Independent School District tax roll.

Q. Was the preparation of the tax roll a function normally contemplated in the contract with the taxing agency by the Thomas Y. Pickett Company?

A. In this instance, it must have been. I don't know, but I do know that Mr. Heras was paid to write the tax roll, so I assume that was part of our responsibility.

Q. Then is the preparation of all tax rolls, of which you have contracts with Thomas Y. Pickett, except the Benavides Independent School District tax roll, the tax roll itself was likewise prepared in Dallas?

A. In some places, we write tax rolls. Most of them, we do not.

Q. Wherever you do have a contract to write a tax roll except as to the Benavides Independent School District, such tax rolls were typed in Dallas, weren't they?

A. I just don't know.

Q. And when are the tax rolls prepared in one year with reference to the next year? Are they prepared a year in advance?

A. Your Board of Equalization hearing would be held in June or July, and the tax roll would be prepared as soon thereafter as the tax assessor could get the rendition and start typing his roll. That would be for January 1 of that year.

Q. Would not the tax roll, say for 1952, be adopted at the June or July meeting in 1951, and the tax roll for 1953 be adopted at the July meeting in 1952?

A. The 1952 tax roll would be written after the Board of Equalization hearing had been held in June or July.

Q. Of what year?

A. 1952.

Q. Then the equalization—the tax roll for a given year was prepared after the June or July meeting and before the tax statements were sent out?

A. I am sorry, I lost track there.

Q. The tax rolls for each year were current? The rolls for the year 1952 would be prepared in June or July of 1952, and the tax rolls for 1953 in June or July of 1953, is that correct?

A. I think that is right.

Q. Are you certain, Mr. Humphreys?

A. Pardon?

Q. Are you sure?

A. Well, I just stated earlier that the 1952 tax roll would be written immediately after or as soon thereafter as the assessor's office could make his renditions in order and type it. That would be for as of January 31, 1952.

Q. Then it would be prepared as of January 31, 1952 after July of 1952, and before the tax statements were sent out in early September of 1952?

A. Yes.

Q. Is this the type tax roll that Diego Heras prepared for the Thomas Y. Pickett Company? Is this what you say you hired him to do?

A. I don't know.

Q. Well, is there any other tax roll? Is this a tax roll (indicating)?

A. It looks like one.

Q. Is this the type instrument you prepared in Dallas for such companies as you prepared them when you have a contract to prepare a tax roll for a taxing jurisdiction?

A. There are different forms, difference colored paper, and lots of school districts have their own form.

Q. Have you looked inside this book?

A. I don't think so.

Q. Would you step over and do so, and tell the jury whether it is the type work Diego Heras did for the Thomas Y. Pickett Company?

(Witness complies with counsel's request.)

Is it?

A. Yes, sir.

Q While you are here, here is a photostat copy of another such, the original not being here. Will you tell us whether or not this likewise appears to be a photostat copy of a similar item but for a different year, 1953?

A. Yes, sir, it appears to be.

Q. And this is—the first one I referred to was Government's Exhibit 35 and this is marked Government's Exhibit 34, is that not true? That is for the record. You see this 34 here?

A. Yes, sir.

Q. You see this 35 here?

A. Yes, sir.

Q. That was to tie it down to what I asked you.

Did you handle the pay of Diego Heras for doing this work?

A. No, sir.

Q. Do you know what he was paid?

A. No, sir.

Q. Do you know whether or not anybody except—do you know he was being paid for that work?

A. Not at the time.

Q. You didn't learn it until when?

A. I don't recall. It was just sometime after I found out.

Q. Was it after this great mass of indictments were returned down there?

A. No, it was prior to that.

Q. Could you give us the approximate month or year that you learned Diego Heras was getting paid by Thomas Y. Pickett?

A. I don't recall, Mr. Foreman. It was just sometime —I just never knew that we had anything to do with the tax roll as far as that was concerned.

Q. Was it before or after the year 1953?

A. I don't recall. I would say after.

Q. After 1953. Would you say it was 1954 or 1955?

A. 1954, I would imagine.

Q. That, then, was after he had ceased working there at the Benavides Independent School District, wasn't it?

A. I didn't know when he ceased working.

Q. Well, is there—do you know whether it was at the

Board of Equalization meeting in June or July you found out?

A. No, it wasn't.

Q. Where were you when you learned Diego Heras was receiving money from Thomas Y. Pickett for doing what Thomas Y. Pickett was being paid for?

A. In Dallas.

Q. You learned it from Mr. Thomas Y. Pickett?

A. Yes, sir.

Q. Well, did you all start preparing the tax roll after Diego Heras ceased preparing it?

A. No, sir.

Q. Do you know who prepares the tax roll now at the Benavides Independent School District?

A. No.

Q. Could you tell us how much annually Thomas Y. Pickett was paid in 1952 and 1953 by the Benavides Independent School District or either of those years for work that contemplated, among other things, the preparation of the Benavides Independent School District tax roll?

A. No, sir.

Q. Do you have any idea?

A. I could make a guess, but it would be just a guess.

Q. What would be your best estimate?

A. About $6,000.

Q. Now, do you know how much you paid Diego Heras in the years 1952 or 1953?

A. No, sir.

Q. Do you know what his basis of compensation was at any time whether by the page, the month, or the year, or what?

A. No, sir.

Q. Mr. Humphreys—I keep thinking of Gordon Simpson instead of Humphreys. I am sorry.

The Court: Are you starting into a new phase?

Mr. Foreman: Yes, Your Honor.

The Court: Very well. This is a good time for a recess. The court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please. Very well, sir.

Q. (By Mr. Foreman) Mr. Humphreys, isn't it true that the work of making the tax roll insofar as detailed typing is concerned is far more onerous and tedious, and involved and technical, than any of the other preparation of forms made by Thomas Y. Pickett?

A. I would say it was more tedious, yes, sir.

Q. And isn't it true as regards the typing of the various items, that it would account for 70 or 80 per cent of the amount of the over-all typing, if not even more?

A. No, sir, not that per cent, I wouldn't think.

Q. Well, wouldn't it have—what per cent of the technical preparation of lists—what was its relationship to the over-all typing that might be done or was done in the years 1952 and 1953 is represented—

A. I just wouldn't know, Mr. Foreman, what per cent you would say one was of the other.

Q. Okay. Now, the tax roll included everything that the others included and more too, didn't it?

A. Yes.

Q. And the tax roll would at least be one-third plus whatever there was on the tax roll that wasn't on the other two, wouldn't it?

A. Yes, sir, I would think so.

Q. All right. In addition to the two trips you made down for the field check of either three days or a week, and the two days meeting for the Board of Equalization, didn't you also go down there to, you all, that is Thomas Y. Pickett, the annual beer-bust and barbecue?

A. There was at the time of the county meeting, there was a barbecue and we would be there for the county meeting and attend the barbecue along with it at the school meeting. There was a barbecue, but it wasn't put on by Thomas Y. Pickett.

The Court: Do you mean meeting of the Board of Equalization?

The Witness: Pardon?

The Court: By meeting, do you mean the Board of Equalization?

The Witness: Hearing, yes, sir.

Q. (By Mr. Foreman) Do you all do the same work for the other subdivisions of the government, to-wit, Duval County, making the same field check you made for the Benavides Independent School District?

A. We did for the county, yes, sir.

Q. That is for the county's evaluation for the County Commissioner's Court?

A. Yes, sir.

Q. You didn't do such work for the County Common School District?

A. Of course when you do the work for the county, I don't recall or don't know, but usually in the case of common school districts, the county tax assessors assess us for them also.

Q. But you didn't get paid separately by the County Common School District?

A. No, sir.

Q. Then the field check you would make insofar as the boundaries of the Benavides Independent School District was concerned, you were also making that check for the county at the same time?

A. That is right.

Q. You got paid by both of them, didn't you?

A. Yes, sir.

Q. Do you know how much you got paid by the county?

A. No, sir.

Q. When was it that you would have this Thomas Y. Pickett beer-bust and barbecue in connection with the county? Was it at the time the county Board of Equalization met?

A. It would be the first day.

Q. You would invite the county side and serve beer, whiskey, barbecued chicken, steaks, beer—I believe I said that, and end it with beer?

A. Barbecue and beer.

Q. Nothing else?

A. That is all I ever saw.

Q. All you ever what, sir? Saw?

A. Yes, sir.

Q. And that was the one you are now talking about that was paid for by Thomas Y. Pickett?

A. That is my understanding.

Q. Did you attend to the paying for it?

A. No, sir.

Q. Were you there at the meetings?

A. Yes, sir.

Q. Was Thomas Y. Pickett there?

A. Yes, sir.

Q. By the way, what building in Dallas are your offices in?

A. We are now at 4000 Cedar Springs.

Q. Where were you in 1952 and 1953?

A. In the Kirby Building.

Q. A great many oil companies have their offices there?

A. Not too many in the Kirby Building.

Q. Do they where you are now?

A. None at all.

Q. You have your own building?

A. Yes, sir.

Q. Tell us whether or not one of the duties and services of Thomas Y. Pickett was to furnish forms for the taxing agencies that you had contracts with to send to the taxpayers notifying them of the meeting of the Boards of Equalization?

A. Yes, sir.

Q. And you would furnish them the forms? Did you have them mimeographed for them to send out?

A. Yes, sir, they were mimeographed.

Q. They were mimeographed in your office in Dallas weren't they?

A. Yes, sir.

Q. And you would mimeograph them in a form substantially as this for the Benavides Independent School District. Follow me closely, up at the top you would type in caps "Office of the Secretary, Benavides Independent School District, Duval County, Texas," and then leave a place for the taxpayer to have his name typed in, or did you type in the taxpayer's name also?

A. That was typed in in Dallas.

Q. All right. Then you would mark it to the attention of Mr.—say it was H. G. Stone of Humble Company. See if this is the form you used.

"Gentlemen, you are hereby notified that the Board of Equalization of the Benavides Independent School District, Duval County, Texas, duly and regularly convened and now sitting for the year 1952, desires to report the assessment upon the properties rendered and/or owned by you for said year and you are hereby notified to be and appear before said Board at 9:00 a. m., on the 1st day of August A. D., 1952, at the school tax office in the town of Benavides, Texas, at which time and place said Board will then consider any evidence you may elect to submit as to the value of said property for taxable purposes. The Board, on said date, will from the evidence now before it and such additional evidence as may be then before it, finally fix, determine and equalize the value of your property for taxable purposes for the year 1952." And all in caps, these words, "By order of the Board of Equalization, Benavides Independent School District, Duval County, Texas, blank, Secretary, Board of Equalization."

Was that one of the forms prepared by you in Dallas, and by you I mean Thomas Y. Pickett?

A. Yes, sir.

Q. And furnished and caused to be sent out by the

Board of Equalization, the Board of Trustees of the Benavides Independent School District?

A. Yes, sir.

Q. That was done for all of the years from 1952, 1953, and whatever years you had charge of that responsibility?

A. Yes, sir.

Q. Is that likewise the form that you used for all such customers as may have Board of Equalization meetings either school districts, counties, or other subdivisions of the government?

A. Yes, sir.

Q. You addressed them? Did you likewise rubber-stamp the signature on them?

A. We addressed them addressed an envelope for each one, and sent the envelopes, with the notice, to the secretary of the school board for his signature.

Q. And are those envelopes stamped or not, or do you know?

A. I don't know.

Q. All right. Now, tell us whether or not you would issued instructions to your contract authorities, or people with whom you had contracts, with reference to instructing them to advise their taxpayers of any new figures of evaluations, and applying the tax rate so as to give them the amount of their current taxes every year after this Board of Equalization meeting?

A. I didn't understand the question.

Q. Did Thomas Y. Pickett & Company of Dallas, did you issued instructions, that is, would the company, through its engineers, issued instructions to the taxing authority, we will say the Benavides Independent School District, instructing them to advise the taxpayer of any modification of their taxes?

A. No, sir.

Q. State whether or not—what your practice was with reference to advising the taxpayers? Were you responsible for seeing that the taxpayers were advised of any modification of their taxes?

A. No, sir.

Q. What happened if the taxpayer's evaluation and the Pickett evaluation did not coincide? What if the Pickett evaluation was higher than the taxpayer's evaluation?

A. At the Board of Equalization hearing, if there was a variance such as that and it couldn't be reconciled, if we thought our evaluation was correct and the taxpayer thought that it was excessive, then the Board of Equalization was presented both sides of the matter and they made the decision.

Q. Who made the decision?

A. The Board of Equalization.

Q. What was Thomas Y. Pickett's instructions, if anything, to the school board with reference to advising the taxpayer as to the result of that decision?

A. After we would present our side to the Board of Equalization and the taxpayer had presented his side, then if they thought there was merit to the taxpayer's request, well, they would cut our—make a change in our proposal. If not, they would let it stand.

Q. Well, did that—and it would be carried forward only in the tax statement rendered?

A. Pardon?

Q. And whatever the final decision was, the only way the taxpayer would know about it would be from the tax statement he would later receive?

A. He would be at the time.

Q. Supposing he wasn't there. What was your practice with reference to notifying him?

A. If he were not at the Board of Equalization hearing, then the evaluations as proposed would be placed, as finally fixed by the Board of Equalization, would be placed on his rendition.

Q. Supposing he were at the Board of Equalization and the matter was not settled as to the amount owing, a given taxpayer with reference specifically to Humble Oil & Refining Company in 1952, do you recall sending instructions to the Benavides Independent School District in a letter and sending a copy of it to the Humble Oil & Refining Company in which it was stated "Humble Oil & Refining Company, Houston, Texas, Attention Mr. J. A. Nolan. Dear Mr. Nolan, complying with instructions contained in letter—", do you recall writing this letter, —"in a letter from our engineers, Thomas Y. Pickett & Company, Dallas, Texas, a copy of which has been provided you, we have modified your 1952 tax assessment of Humble Oil & Refining Company to conform with said instructions. The assessment is $2,542,910, and applying the tax rate of $1.7[illegible] on the $100 valuation, it is $44,501.10. We hope these changes will meet your approval and acceptance. Yours very truly, Benavides Independent School District, by Diego Heras, Deputy."

Do you recall any acts that led to the writing of that letter between you and Humble or between you and the Benavides Independent School District?

A. No, I don't recall the actual reference you have there. It could have been. Even when a taxpayer is present at the Board meeting and through, after they have gotten their statement, you will find discrepancies, double assessments, and such that have to be corrected.

Q. Well, that is what I had reference to. Now, do you undertake to advise these people with whom you have contracts, the subdivisions of the government, to advise by mail and keep a record of such adjustments or discrepancies?

A. Usually after statements have been received by the taxpayer, when they find discrepancies they will write the taxpayer—excuse me, the tax assessor, and then as soon as we are hired to assist them in the evaluation and the handling of it, they will forward those on to us and we will, if we find a double assessment has been made, make a recommendation back to the school authorities it should be canceled off here and assessed correctly.

Q. Do you likewise advise the school authorities, meaning the Benavides Independent School District in this case, to advise the taxpayer of such adjustments?

A. Well, he would be advised when he received a corrected statement.

Q. All right. Now, Mr. Humphreys, getting down to Government's Exhibit 211, it is, is it not, an unbound compilation, or just a group of loose-leaf pages; loose at both ends and loose in the middle, of some printed and some typed, some printed and typed sheets, many of which have printed on it "Inventory of Property." In fact, do they all have that or do you know what is on them? Isn't it true—I am asking this for the record so that the court reporter will get a description of it. Would I correctly describe what this group designated as Government's Exhibit 211 is? It is not bound at all, is it?

A. No, sir.

Q. Just loose sheets. It is just loose sheets, isn't it?

A. Yes, sir.

Q. Do you know approximately how many loose sheets it is?

A. No, sir.

Q. You haven't counted them?

A. No, sir.

Q. But it is approximately how many inches high?

A. Four.

Q. And about how many inches long, standard legal size, isn't it?

A. Yes.

Q. Eight and a half by eleven, I believe, isn't it? Or is it eight and a half by fourteen?

A. Fourteen.

Q. That is right, and do you know where in the City of Benavides or in the offices of the Benavides Independent School District those were kept, the sheets that now comprise Government's Exhibit 11?

Mr. Wilkey: 211.

Mr. Foreman: 211, I mean.

A. No, sir.

Q. You don't know whether they are at different places, or at one place. Whether they are loose and selected from various places and put together or not, do you, after they were turned over there and before being produced here?

A. No, sir.

Q. You don't know whether they were filed in a filing cabinet or tossed in a barrel?

A. No.

Q. Exactly what do you have to do with this group of loose sheets, if anything, in your capacity as accountant with Thomas Y. Pickett in handling the Benavides Independent School District account?

A. From the start to the time—

Q. Yes, sir, just give us—when would those first be turned over to you, and by whom would they be? Would they be turned over in a group or turned over separately? Would they come to you directly in the mail, or pick them up at Benavides? Give us a history, in your own words, how they would come into your possession?

A. They would usually come in a group by mail the first time at which time the notices, which you read one of, would be prepared.

Q. Those mimeograph forms I read a while ago?

A. Yes, sir.

Q. Did you type one of them to each one of these, and address it and make the envelope for it?

A. Yes, sir. Everyone that was going to be notified, then the next time would be after the Board of Equalization hearing. We would take them back in with us and process them as to the values.

Q. You would take them from Dallas back to Benavides?

A. No, sir, from Benavides back to Dallas.

Q. About what time of year did you receive those in Dallas in a bunch?

A. Well, it would be sometime prior, usually, at least two weeks prior to the Board of Equalization hearing because you want to have time to prepare the notices and get them back to the secretary for his signature so they can be mailed ten days prior to this hearing.

Q. Isn't it true, Mr. Humphreys, frequently there would be one big bunch and then there would be others, others sent as they would be received?

A. Occasionally late ones would come in, yes, sir.

Q. And sometimes there might be several different

bunches of those sent in the course of any given year from Benavides to your office there in Dallas?

A. Yes, sir.

Q. And such—of course you had other accounts and contracts besides the Benavides Independent School District yourself, didn't you?

A. Yes, sir.

Q. About how many such do you yourself service?

A. Four counties and three school districts.

Q. And they are all in southwest Texas, or scattered throughout?

A. At that time, they were all in southwest Texas.

Q. Then you, of course, yourself, did not attend to the receiving, the opening of the various packages of any one of these years of renditions would come, but that would be done as a matter of form by the people doing the detail work in the office?

A. Yes.

Q. And you didn't do the typing, the detailing of the typing of the envelopes and addressing of those mimeograph forms I read a moment ago, but they would likewise be done by the office help in Dallas, wouldn't they?

A. Yes, sir.

Q. Did they mail back, or did you carry with you those renditions represented by Government's Exhibit 21 when you would go to the Board of Equalization meetings?

A. They could be either way. They could be mailed back if the meeting was some time off yet and we would receive them early enough where we had some time intervening, or they would be carried back if we were going directly from Dallas to that meeting.

Q. You do not recall what procedure was followed in the years 1952 and 1953, do you?

A. No, sir.

Q. And likewise any that might have come in late might have been sent back late even some time after the Board of Equalization meeting, wouldn't they?

A. I don't recall any ever going back that way.

Q. Then you did not yourself, or did you, carry back those typed mimeograph letters and addressed envelopes, or were they mailed?

A. They were mailed.

Q. And where were they mailed from? Do you know whether they were mailed from Dallas or Benavides in the years 1952 and 1953?

A. You mean the notices after they would be put in the envelopes?

Q. Yes, sir.

A. They would be mailed from Benavides.

Q. You all were furnished envelopes from the Benavides Independent School District to address?

A. Usually we were furnished envelopes by the taxing jurisdiction. I don't know whether we were or not in that instance.

Q. Or whether you used blanks or your own?

A. We never used our own. They would be blank or the taxing jurisdiction.

Q. The next time you would see this group, or a group of some several hundred or a thousand renditions would be at the Equalization Board meeting and after the Equalization Board meeting, what, if any, contact, supervision or handling did you customarily have of those renditions represented by Government's Exhibit 214?

A. They were taken back to our office in Dallas or sent back, usually taken as we were going right back in at that time.

Q. Either you or your assistant or associate, or Mr. Pickett himself might occasionally do that?

A. Yes, sir.

Q. And then when they had been there in Dallas, what would be the purpose for having them back there then? It was to use them for the basis for preparation of what is represented here as Government's Exhibit 230-B or a similar list, is that true?

A. Well, no, sir. That is all right—it would be for the purpose of putting what is on the ownership list onto the ones that are rendered.

Q. This is the ownership list, 230-B?

A. Yes.

Q. And it would be for the purpose of putting—

A. Checking, the rendered against that.

Q. Now, is this a permanent record you have there all the time? That is, by this I have reference to 230-B, the ownership list. Is that something that is changed from year to year?

A. It changes from year to year.

Q. Is there any ratio of change as to what per cent it might be every year?

A. No, sir. You would have, for every new lease, during the year you would have to secure a new ownership list for where there would be sales made during the last year. You would have to get a correct—try to get a correct ownership list.

Q. And the information for such changes as were made in the ownership list G-230-B would come from the County Clerk's offices—where would it come from?

A. It would come from the purchasers of the oil and gas, primarily pipeline companies.

Q. From the E. B. Report?

A. No, sir, that is not the E. B.

Q. Do you get it from the Railroad Commission?

A. No, sir, it comes from the—perhaps the pipelines, or truckers, or whoever is purchasing oil and has the division of interest.

Q. Would they make that report to Thomas Y. Pickett, or who would they make the report to so as to give Thomas Y. Pickett a source for the information?

A. They furnish it to us, Thomas Y. Pickett.

Q. How do you make sure that that was done? What if they didn't do it?

A. If they didn't do it, I don't know how we—

Q. Make them do it?

A. —could make them do it.

Q. You relied upon, in preparing this ownership list and preparing such tax rolls as you did prepare, on the persons or companies purchasing the oil telling you, as distinguished from going to the county clerk's office and seeing if a lease or sale was recorded? You waited for them to bring it to you?

A. They would furnish division of interest, yes, sir.

Q. If they didn't furnish it to you, there wasn't any way you could have gotten it save going to the clerk's office, isn't that true?

A. We made every effort we could to get a division of interest for each lease. We had—

Q. Go ahead.

A. Well, we attempted to fill in that information—

Q. If a purchaser didn't tell you he was a purchaser, you would not go to the county clerk's office to find out about it?

A. Occasionally we would go down to the county clerk's office. We tried to fill in the missing information from every source that we could.

Q. Do you recall ever having gone to the county clerk's office to ascertain or check on the ownership, or list of any oil leases in the Benavides Independent School District?

A. No, sir.

Q. That was one of the duties of the tax accountant as distinguished from the engineer, to make sure all owners were listed?

A. Yes.

Q. All right. Then, after taking those back to Dallas you would check them, that is Government's Exhibit 211, against the ownership list represented here by Government's Exhibit 230 and for whatever useful purpose or whatever use or purpose do you use those in Dallas other than to check against the ownership list, those I pointed to, Government's 211?

A. Writing the final order from the rendered and unrendered lists, and that would be all.

Q. By the final order, you mean what is represented here by Government's Exhibit 210?

A. Yes.

Q. By final order, you mean the order of the—or rather minutes of the meeting of the Board of Equalization?

A. Yes.

Q. Having used the various sheets in Government's Exhibit 211 for the dual purpose of checking against ownership lists and writing the final order, what would next be done with the various individual pages making up the group of inventory of property?

A. They were returned to the tax assessor's office.

Q. And that would usually be done about what time of year?

A. Well, I don't know of any way you could say for any particular year. If the meeting were held, say, in the

middle of June and we went right back in and could finish that up, didn't have any intervening meeting, it would possibly be back within ten days to two weeks. Of course, every taxing jurisdiction is anxious to get their work back as soon as possible so they can start writing their tax rolls.

Q. Would you locate on this ownership list Texas Consolidated Oil, Hagist Ranch, P. W. Pitzer & Sons, Texas Consolidated Oils. Would you check those, please? Would you see if those names are on there?

A. When?

Q. What date have you?

A. That is 1953.

Q. Yes, sir. Did you ask him any of those questions?

Mr. Wilkey: I didn't inquire about that.

Q. Will you look on there and see if you find them? P. W. Pitzer & Sons?

A. I need the second book, please, sir.

Q. Find Katz. K-a-t-z.

He is reading from 230-A for Katz.

A. All right, sir.

Q. Is it there?

A. Sid Katz.

Q. All right, sir. What page is it on? Is it on page—are those numbered, those pages?

A. I think those run—343.

Q. It is on Page 343 of Government's Exhibit 230-A, isn't it? Is that right?

A. Yes, sir.

Q. Look at 230-B and see if you find P. W. Pitzer & Sons?

A. The first one is on—do you want the page?

Q. It is there, isn't it?

A. Yes, sir, here's the first one.

Q. There are several Pitzer & Sons, aren't there? On page—what is the Pitzer & Sons, Brackenridge, Texas, what page is it?

A. Page 510.

Q. And it shows originally $7,020 as the amount of taxes owed, and a collection in red, struck through it, and $6,870 there in a pencil, red pencil, doesn't it?

A. Yes, sir.

Q. That is for the year 1953, isn't it?

A. Yes, sir.

Q. Here is the next P. W. Pitzer & Sons, I mean Pitzer & Sons. This one doesn't have P. W.; it is just Pitzer & Sons. What page is it on?

A. 511.

Q. Pitzer & Sons, Breckenridge, Texas?

A. Yes, sir.

Q. It shows in typing $15,620 in taxes, and it shows a correction reducing it to $11,820, doesn't it?

A. Yes, sir.

Q. That is written in red pencil?

A. Yes, sir.

Q. And it shows the valuation fixed at $14,540, doesn't it?

A. Yes.

Q. May I show this to the jury, Your Honor? I am not going to take the time to go into Texas Consolidated and Hagist Ranch.

Mr. Wilkey: What was the page on that? Could I see those, for curiosity?

Mr. Foreman: 510 and 511 of Plaintiff's Exhibit 230-B.

Now, Mr. Humphreys, who would, as a matter of custom and practice and in the preparation of those various rolls, normally make those red corrected marks?

A. At the Board of Equalization hearing, it could have been any one of our force that was there, that happened to be checking with the representative of Pitzer & Sons.

Q. Do you recognize the handwriting of those figures, each one, or do you recognize them as those of any other individual known to you connected with P. W. Pitzer & Sons?

A. Those figures are not mine. I don't recognize them. They are one of our force, I am sure.

Q. Now, it was the duty and responsibility of Thomas Y. Pickett & Company to check this ownership list and see that it correctly included the renditions represented by Government's Exhibit 11, isn't that correct?

A. You say that the—

Mr. Wilkey: 211.

Mr. Foreman: 211. I keep saying 11. I mean 211.

A. It was to see that the valuation as fixed by the Board of Equalization was properly put to the renditions.

Q. And also to see that, I believe you stated, that the purpose of returning them there was to check them against the ownership list and also to prepare the final orders?

A. Yes, sir.

Q. Then if Thomas Y. Pickett's rendition had not been turned over—if Pitzer & Sons or P. W. Pitzer or Sid and Meyer Katz had not been turned over to the—your company, they couldn't have gotten on this list, could they?

A. Let's see if I understand you.

Q. You couldn't have had any source? This is the list for 1953, isn't it, sir?

A. That is correct, yes, sir.

The Court: A telephone has been ringing somewhere a long time. I would like for someone to attend to that phone, whoever should attend to it, so it wouldn't ring so long.

The Clerk advises me it is a pay telephone in the hall. I don't know who attends to that. The Court is out of order.
Mr. Foreman: And the phone is out of order, probably.

The Court: I don't think it is. It is ringing pretty loud.

Q. (By Mr. Foreman) And the renditions are likewise for 1953?

A. Yes, sir.

Q. Isn't it likewise the responsibility of Thomas Y. Pickett, since their contract calls for the preparation of the tax rolls, or did in 1952 and 1953, to see that the tax rolls coincide with the ownership list represented here by 230-B and by the Board's final orders represented here by Government's Exihibt 210. Isn't that one of the contemplated responsibilities vested or called for by that contract?

Mr. Wilkey: Your Honor, I think that assumes a fact not in evidence as to whether or not Thomas Y. Pickett is responsible for the 1952 roll or the 1953 roll.

Mr. Foreman: I will ask it again if he fails to recall it. Does the Court recall it enough to rule?

The Court: No, I do not.

Q. (By Mr. Foreman) Mr. Humphreys, I will ask you again, as I did a while ago, did or not the contracts of the Benavides Independent School District Board of Trustees with Thomas Y. Pickett call for the preparation by the Thomas Y. Pickett Company of the tax rolls represented by Government's Exhibit 35 and Government's Exhibit 34?

Mr. Wilkey: Objection. It is duplicitous. Those are two different years. The contract for one year might call for it and the contract for another year might not.

Mr. Foreman: I will ask it separately.

Did or not the contract—didn't you testify a while ago it was, and you all hired Diego Heras to do it?

A. I testified Mr. Heras was being paid; as far as I know it must be in our contract because I didn't know for sure about that.

Q. By your contract, you mean the Thomas Y. Pickett contract with the Benavides Independent School District Board of Trustees?

A. Yes, sir.

Q. And that meant in addition to being responsible for 230-B and 210, you were likewise responsible for Government's Exhibit 35 and Government's Exhibit 34?

Mr. Wilkey: Objection. The witness specifically refused in previous testimony to identify the years Diego Heras was hired by Thomas Y. Pickett. That is the source of my objection.

Mr. Foreman: I am quite certain Mr. Wilkey did not wilfully and intentionally misstate the record.

Mr. Wilkey: I don't think I have.

Mr. Foreman: Let's see if you have.

Did you not testify that as long as he was at the Benavides Independent School District, that Diego Heras was so employed, didn't you, that is as to the tax rolls?

A. I don't recall, Mr. Foreman, if I did.

Q. Was he or not?

A. I would assume that he was. Because I would think that the contract would have been the same, but I don't know for sure.

Q. All right. Now, then, anybody left off, or any taxpayers or any omission from the tax roll was something that Thomas Y. Pickett, or you as accountant for Thomas Y. Pickett, under your contract with the Benavides Independent School District ought to have detected and pointed out, isn't it?

Mr. Wilkey: We object, Your Honor, because the question does not specify the years, to which tax roll. This is a matter of some importance, and the question is misleading because it does not specify the year and counsel is attempting to get this man to say something about the year 1953 as well as the year 1952.

The Court: All right. I suggest the years be separated in the question.

Mr. Wilkey: Which he has already said he didn't know.

Mr. Foreman: May I ask that the jury be instructed not to consider the remarks of counsel.

The Court: The jury has been so instructed on a number of occasions, and I think the jury knows.

Mr. Foreman: My motion would have gone further than that, and I know the Court has done so, but it is the form, the repeated form of the scurrilous effort on the part of defense counsel that is calculated in the form of the objection. He says that I am attempting to do something, and that I know something, when that is not necessarily part of an objection, and it does reflect on counsel and I ask that the prosecuting attorney at least be a little more conscientious in his insinuations as to what I know or what I am attempting to do.

The Court: Very well. The jury is instructed you will not consider the objections made by counsel, you will not consider the questions asked, that you will consider only the sworn answers of the witness.

Q. (By Mr. Foreman) As to the year 1952, and Thomas Y. Pickett had contracted to prepare the tax roll, would not the detection of any omissions from the tax roll be a responsibility placed on you as tax accountant in charge of the contract of the Benavides Independent School District?

A. No, sir.

Q. It would not. Did you also delegate, or did Thomas Y. Pickett delegate Diego Heras the responsibility of seeing that all taxpayers were on the tax roll that appeared on the ownership list, and on the Board, that is on the Board of Equalization's final order?

A. If all the renditions had been returned, and the final order and agreement, then every one of those would be on the tax rolls.

Q. Yes, sir, and you were taxing accountant, you were the ones that were in charge of those papers and rolls for Thomas Y. Pickett, weren't you, Mr. Humphreys?

A. To when it was returned to the tax assessor's office. Then we had nothing to do with it after that.

Q. You mean you, as a matter of custom, never did do anything about it, isn't that true?

A. No, sir.

Q. Isn't it true you had the legal responsibility of supervising all of the books contemplated by the contract between the Benavides Independent School District and the Thomas Y. Pickett & Company?

Mr. Wilkey: I object, Your Honor. It calls for a conclusion as to what was legal responsibility, which is a conclusion a lawyer and the Court could make, not this man here.

The Court: I will hear him testify as to what his responsibility would be in that respect.

Mr. Foreman: May I ask a preliminary question?

The Court: You may, sir.

Q. (By Mr. Foreman) Mr. Humphreys, where would a copy of that contract between Thomas Y. Pickett and the Benavides Independent School District for the years 1952 and 1953 be so as to make it available here? Could you obtain it?

A. I don't have the slightest idea where it would be. I might could obtain it if it is in our office.

Q. Would you undertake to ascertain whether you can at the noon hour, or let us know here this afternoon whether or not it can be made available for this record in this case?

A. All right, sir.

The Court: That is for the years 1952 and 1953?

Mr. Foreman: Yes, Your Honor.

The Court: Very well, sir.

Q. (By Mr. Foreman) Where are such contracts normally kept by your company?

A. I guess in the office, the manager's office. The bookkeeping office.

Q. The bookkeeper's office, the manager's office, and at what address?

A. 4000 Cedar Springs.

Q. 4000 Cedar Springs, Dallas, Texas?

A. Yes, sir, that is correct.

Q. Who is the person who would have charge of that contract?

A. Mrs. Houchins.

Q. H-o-u-c-h-i-n-s?

A. Yes.

Q. And her first name?

A. Clara.

Q. C-l-a-r-a?

A. Yes, sir.

Q. She is the office manager?

A. She is Mr. Pickett's secretary, but the records are kept in the office, the manager's office.

Q. Where does Mr. Pickett keep himself? Where does he stay?

A. He has his office there?

Q. In Dallas?

A. Yes.

Mr. Foreman: That is all, Your Honor.

9-2037 REDIRECT EXAMINATION

Q. (By Mr. Wilkey) Do you know whether or not Mr. Diego Heras left his employment in the Benavides Independent School District office in 1952?

A. No, sir, I don't.

Q. You don't know one way or the other?

A. No, sir.

Q. Do you know who prepared the tax rolls for the Benavides Independent School District in 1953?

A. No, sir.

Q. Do you know whether or not, one way or the other, the preparation of the tax roll in 1953 was the responsibility of Thomas Y. Pickett, or the responsibility of the taxing authority for that year?

A. I don't know.

Q. I see. All right. Now, does the name of the taxpayer on this alphabetical list of rendered property, here on Exhibit 225, being for the year 1953, indicate anything one way or the other as to whether or not the taxpayer has reported to the taxing authority his property?

A. Yes, sir, if the—

Q. What does it indicate?

A. If it is listed here, there was a rendition made voluntarily on the rendered part here. If it is listed in the

unrendered, there was no listing made and it was prepared by us in our office in Dallas.

Q. Is it true or not—strike that.

Are all of the names on here on the rendered and the unrendered in this alphabetical list the names that are in these two stacks of individual inventory sheets, the unrendered here and the rendered here, which are submitted to the school district taxing authority?

Mr. Foreman: He says are they supposed to be here. I have no objection, but it would have to be hearsay or supposition, and I object to that as calling for hearsay.

Q. (By Mr. Wilkey) Very well. In the normal course of your business with Thomas Y. Pickett & Company, are the names of the taxpayers which appear on the alphabetical list of the inventory sheets of the rendered and unrendered tax paying property?

A. Yes.

Q. And the alphabetical list and the rendered sheets and the unrendered sheets transmitted to the taxing authority each year?

A. Yes, sir.

Mr. Wilkey: Now, then, Your Honor, we offer in evidence the rendered oil property, individual inventory sheets for the year 1953, Government's Exhibit 211, and the unrendered oil property inventory sheets for the year 1953, being Government's Exhibit 212.

Mr. Foreman: May it please the Court, we object to this Government's Exhibit 211 for the reason there has been no showing that this is a complete list of the rendered

oil renditions, and it has been described and is here simply as a group of loose-leaf sheets. It is only offered by the Government on the Government's theory that Pitzer & Sons, Texas Consolidated, Hagist Ranch, and certain items represented here are not here, not to prove what is here, and anyone attempting to shore up the Government's case could have omitted those, and to admit this great mass of utterly unimportant matters as a suggestion of proof that something that may not be here never was here unnecessarily encumbers the record. It is immaterial and irrelevant. Insofar as what the Government was to stipulate, anything it says is not in here is not here, we will certainly stipulate it with them, but to offer this as proof that any one of these defendants had anything to do with removing something that couldn't have been removed since it appears in the other list is to suggest to a lay jury some probative force of value to this testimony that is offered by way of exclusion and the—therefore we object to it as unnecessarily encumbering the record. We object to it as having no probative force and we object for the reason there has been no showing at any time that these things were even tied together or even in the same place, or as to who compiled this Government's Exhibit 211 or if it was compiled, or how many places and sources in the office of the Benavides Independent School District it was compiled, and for each of these reasons we object to this Government's Exhibit 211 being received here.

Mr. Wilkey: Your Honor, the significance of the absence of certain sheets from 211, and the presence of the bulk of the others is a matter to weigh by the jury, and this goes to the weight of the evidence. Your Honor will

recall that both 211 and 212 were brought in first by Mr. R. R. Gonzales, the lawful custodian of the records—

The Court: My records show they were brought in by Mr. Gonzales, and I would like for you gentlemen to advise me what his testimony was concerning them. 211 is, from appearance, at the distance from which I am looking, appears to be a sort of disorganized bundle of papers about four inches thick.

Mr. Wilkey: Your Honor, you will see by examining it, while it may appear disorganized after Mr. Foreman has rifled through it—

The Court: What was Mr. Gonzales' testimony concerning it?

Mr. Wilkey: This is in alphabetical order, which we submit is significant, and Mr. Gonzales, as I recall, testified those were the individual inventory sheets of taxpayers, and that he customarily in his job as tax collector at the present time, received sheets of that type in his office now, that tax rolls were prepared from those sheets, that the actual typing of the tax roll was done from these sheets and further, Mr. Gonzales took these sheets on the edge of the table and, as we called out certain names of taxpayers, we went through and attempted to find some of them. Those records were not bound but were at the same time shown to be in the custody of Mr. Gonzales from the time he took office until he brought them into this courtroom, and they were as much a part of his records as anything else we have introduced. We do not offer those in evidence to encumber the record, as Mr. Foreman says, and we did not offer them in evi-

dence until after Mr. Foreman spent a good many minutes in examining this witness as to the preparation and use and what was done with them. We have now shown, not only by Mr. Gonzales, the custodian, but also the man who transmitted them both from the School District to his office and back, as to their preparation and use, and for those reasons and on that basis we offer them, and we submit respectfully that the objections of the defense constitute the weight which the jury should attach to the evidence.

Mr. Foreman: We might further object, in addition to what we have heretofore made, that in the light—the Court asked what Mr. Gonzales testimony was. He simply said he found them. He didn't say where he found them or where they were bundled up.

The Court: They were found in his office?

Mr. Foreman: They were found at the office of the Benavides Independent School District either by some of these agents looking, the two post office inspectors, or him, and he didn't know who found what.

Mr. Wilkey: Those were produced on Mr. Gonzales' appearance as he appeared on the stand with the tax rolls and other records, and I think he testified they were in the condition in which he kept his records, bound with a string, which has since been unwrapped, but he unwrapped them in the presence of the Court.

Mr. Foreman: Let me get that last part. Miss Stenographer?

The Official Reporter (Reading): "I think he testified they were in the condition in which he kept his records, bound with a string, which has since been unwrapped, but he unwrapped them in the presence of the Court."

Mr. Foreman: I don't think he said that.

Mr. Wilkey: I think he did.

The Court: In the condition in which we find them now is that they are a group of papers unbound except by a string tied around them. They may be competent evidence. I don't know how you accurately have them identified as an exhibit in this case. The entire bundle is identified as Government's Exhibit 211. How we could insure against anything being added or being withdrawn, I don't know. I do want to say, my previous estimate as to the thickness and the estimate of this witness and Mr. Foreman is not a correct estimate. I have applied the scale, and they measure about two and a half inches thick, so for any value that may have for the record, I want to say it is a bundle of papers about two and a half inches thick. Is it believed individual sheets, which are quite numerous, should be identified?

Mr. Wilkey: Your Honor, those documents will remain in the custody of the Clerk until they are sent to the jury, and we will leave it to the Court whether they should be identified by any additional numbers.

Mr. Foreman: May it please the Court, is not the position of the Government in this case the position of the

man who killed the bear, and while he didn't have the bear, he had the tree?

The Court: I don't know whether it is or not. The case is still in progress and I think if the Government had completed its case, it would rest.

Mr. Foreman: May it please the Court, we submit that the proper way for the Government to get in evidence by exclusion, whatever it wants to, is make a list of what the thinks should be there and let us see it and then stipulate it is not and with the stipulation, whether it is not there by design of someone, try to tighten the Government's case.

The Court: I don't intend to admit anything that isn't here, but I will overrule the objection and admit in evidence Government's Exhibit 211. I do have some concern about its identification because it is a group of papers about two and a half inches thick, otherwise not identified except by the number 211 on the top sheet.

Mr. Wilkey: Well, Your Honor, we suggest that the Clerk do as was done on other exhibits, such as the deposit slips, and give them letters A, B, and C, and that this be done at recess.

The Court: It has been suggested they be numbered instead of lettered because there are so many sheets. That will be done, and the Clerk is authorized to employ assistance.

Mr. Wilkey: We also have Exhibit 212 here, Your Honor, which is the unrendered property.

The Court: Do you have the same objection to Exhibit 212?

Mr. Foreman: May it please the Court, I have further objection to 212. I don't think there is any evidence or testimony touching anything that they purport to show and not to show. I think that just from the bulk, it is an attempt to support by a bunch of papers the weight of the evidence, not add—

The Court: Goes to the weight of the evidence?

Mr. Foreman: Yes.

The Court: I think that bundle should likewise be looked at and measured.

Mr. Wilkey: Your Honor, we offer Exhibit 212 along with 211 in order that the source of the 1953 tax rolls in regard to property may be complete. 211 represents the rendered oil property and the one you are now measuring represents the unrendered, and both are used in making up the rendered Roll C and the unrendered Roll D.

The Court: The objection is overruled, and Exhibit 212 is admitted in evidence. Likewise it is a budle of sheets bound with a string. Exhibit 211 was a bundle of sheets which we call legal-size sheets, and as I stated earlier, about two and a half inches thick. A bundle—212 is a bundle of sheets, the size we normally call legal-size sheets, and it is about five inches thick. It is suggested that those likewise be numbered, each sheet.

Mr. Foreman: Your Honor, I am not going to make any suggestion. The Clerk is too good a friend of mine.

Mr. Wilkey: I am not going to make any suggestion on that score either, because I don't think it would be necessary to refer to individual sheets.

The Court: If the numbering is dispensed with, I suggest it be dispensed with on both exhibits and I suggest it be wrapped and tied at all times unless both parties want to untie and handle them in the presence of the Court and the jury.

Q. (By Mr. Wilkey) Mr. Humphreys, I show you what has been identified as Government's Exhibit 157 here, and ask you what that is?

A. This is the notice of the Board of Equalization hearing for this year 1952.

Q. Is that the type notice Mr. Foreman was asking you about by reading two or three paragraphs?

A. Yes, sir.

Q. Was the mimeograph portion of that notice prepared in your office?

A. Yes, sir.

Q. How about the typing addresed to Humble Oil & Refining Company. Was that prepared in your office?

A. Yes.

Q. How about the rubber stamp "O. P. Carrillo, Sr., Secretary, Board of Equalization," was that prepared in your office?

A. No, sir.

Q. Do you have anything to do with the affixing of that signature?

A. No, sir.

Q. When this left your office, will you describe it as it left your office?

A. The envelope was typed with the address, each notice like that, and all of them in a box.

Q. Like so, and in a box and mailed where?

A. To the Benavides School office.

Q. I show you Government's Exhibit 159 and ask you what that is?

A. That is a notice of the Board of Equalization hearing for 1953.

Q. Like 157 here, was it prepared in your office?

A. Yes, sir.

Q. How about the rubber stamp signature "O. P. Carrillo, Sr., Secretary, Board of Equalization," was that prepared in your office?

A. No, sir.

Q. Was it transmitted the same as 157 here?

A. Yes, sir.

Mr. Wilkey: We offer in evidence Government's Exhibits 157 and 159.

Mr. Sharpe: If the Court please, we object to each of Exhibits 157 and 159 for the reason that they have not been authenticated, that they were notices purportedly sent to Humble Oil & Refining Company, Houston, Texas, and no witness has testified in this case as to the receipt of those in the mail.

Mr. Wilkey: Your Honor, we will withdrew the offer until we produce the witness from the Humble Oil & Refining Company.

The Court: Very well.

Mr. Foreman: May it please the Court, there is a lot of detail here, and I don't want to hold up the Court. I want to get whatever the Court's orders are or instructions. I would like to have certain matters I have got checked here, I want to prove by this witness at the resumption of whenever the Court recesses to. These are by lists, and I don't know enough about these things to be able to find in this book what is represented here.

The Court: Very well. We will take a recess now. It is now twelve o'clock. The Court will recess until 1:45, and I suggest during that period or now, if it is convenient, you confer with the witness and ascertain what he knows about it, and I am going to order that and encourage it because I think it will save time if you and the witness review it, so when he goes back on the witness stand you can expedite your examination.

The jury is reminded of the instructions previously given, and the Court is recessed until 1:45.

9-2051 AFTERNOON SESSION—JUNE 5, 1957

The Court: Be seated, please.

Mr. Bottler: Your Honor, Mr. Wilkey will be here in just one moment.

The Court: Are you still on cross examination, Mr. Foreman?

Mr. Foreman: Yes, Your Honor.

The Court: I suggest we proceed in the absence of Mr. Wilkey. Mr. Bottler is here for the Government.

9-2051 GORDON HUMPHREYS,

being the witness who was on the stand at the time Court recessed for lunch on June 5, 1957, resumed the stand at this time and continued his testimony as follows:

9-2051 RECROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Humphreys, just before noon we had a discussion here and a suggestion from the Court that we use that recess period for noon to identify Government's Exhibit 230-A, otherwise referred to as ownership lists—what we called ownership lists?

A. Yes, sir.

Q. The certain items checked in—by me, in Government's Exhibit 225, those checked items being Gasoline Production Corporation, $67,340; Gilcrease Oil Company, $30,310; Hagist Ranch, Incorporated, $11,880; Hagist Ranch, Incorporated, $36,590; Hagist Ranch, Incorporated, $30,870; Hagist Ranch, Incorporated, $7,800; Meyer Katz, Sid Katz, and Sid and Meyer Katz, the last being $79,410; Pitzer & Sons, $58,580; Pitzer & West, $9,360; Texas Consolidated Oils, $83,750.

Now, first, will you tell us whether or not each of these just read off from 225 appear, and if so how they did appear in 230-A? Would they be in chronological order, I mean in numerical or alphabetical order?

A. No, sir. If they were operators, they would be in

alphabetical order. If they appear to have interests under other leases, they would be in there wherever—whatever those lease were they happened to be under.

Q. They would be listed—

The Court: Mr. Humphrey, I will ask you to again speak up louder and keep your voice sustained.

Q. If what they owned are mineral interests, they would be at almost anywhere in here where that mineral interest appeared?

A. Yes.

Q. Before you could find Texas Consolidated or Hagist or Gilcrease, or any of these people, you would have to know the name of the lease and find the lease in here?

A. If they were other than their own operated leases, yes, sir.

Q. You would require instead of the hour and 45 minutes we have had working continuously, it would require approximately, working continuously, how many hours or days to find in Government's Exhibit 230 each of these taxpayers or landowners or mineral interests as they appear in 225?

A. It would take considerable time. I don't have any idea how much.

Q. It might take days instead of hours?

A. It would take the balance of the day and maybe some into the next, if you checked on each one.

Q. By doing so, you would at least find in this Government's Exhibit 230-A all of the mineral interests and for each of the companies as it appears here on 225?

A. Yes, sir. Every mineral interest would be on the order.

Q. Every mineral interest that is on the order—is this what you call the order?

A. Yes.

Q. Would appear at various places under various leases in the ownership leaseholding royalty interest, File 230-A?

A. Yes, sir, every mineral.

Q. Then the fact that those read off do appear in here indicates to you that they also appear in here (indicating), but at various places?

A. Yes, sir.

Q. All right, sir. Here is a notice signed Thomas Y. Pickett, by Gordon Humphreys. Is that your signature?

A. Yes, sir.

Q. And it is dated here October 1, 1953, isn't it? Right here?

A. Yes, sir.

Q. And it says, "Accepted October 1, 1953, D. C. Chapa, Tax Assessor-Collector," doesn't it?

A. Yes, sir.

Q. And isn't it true that you certify here under your signature these orders, among others, the information contained herein as on the tax rolls of said Benavides Independent School District, readily accessible to any taxpayer or citizen, but will not be found in the condensed form as shown by this record. Didn't I correctly read this certificate?

A. Yes, sir, you did.

Mr. Foreman: That is all.

Mr. Wilkey: No further questions, Your Honor.

The Court: Very well, sir. You may step down.

Mr. Wilkey: We will call Diego Heras.

The Court: Does that hammering disturb anybody besides me?

Mr. Foreman: It doesn't help my nervous system.

The Court: It disturbs the court reporter, defense counsel, as well as the Court. I will send and find out where it is and what it is and make an effort to stop it.

Mr. Foreman: I would rather not have it. I was in this courtroom one time when the paving of the street outside was stopped by Judge Hutcheson, Your Honor.

9-2055 DIEGO HERAS,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

9-2055 DIRECT EXAMINATION

Q. (By Mr. Wilkey) Will you state your name, sir?
A. Diego Heras.
Q. And where do you live, Mr. Heras?
A. I live in Houston now.
Q. And where were you born?
A. I was born in Benavides, Texas, in Duval County.
Q. What year?
A. I was born November 12, 1912.
Q. All right, sir. Where have you lived most of your life?
A. In that same place.
Q. Do you own a home there?

A. Yes, sir.

Q. Is this the house in which you were born?

A. Yes, sir.

Q. Are you married or single?

A. Married.

Q. How many children do you have?

A. Four.

Q. Are they grown up, or are they small?

A. I have two in service, one in the army and one in the navy, and two in high school.

Q. In high school there in Benavides?

A. They are attending school in Benavides, yes, sir.

Q. What education have you had, Mr. Heras?

A. I went through high school and with that I took some correspondence courses in bookkeeping, auditing.

Q. Correspondence courses?

A. Yes, sir.

Q. Did you ever go to college?

A. Yes, sir.

The Court: Before we continue, I am going to make an effort myself to find the source of that pounding, and the Court will recess a few minutes.

(Short recess.)

The Court: Be seated, please. It seems there are so many operations of the Government, the right hand doesn't know what the left hand does.

Mr. Foreman: May it please the Court, may we ask that the jury be retired for a motion?

The Court: The jury will be retired.

(The following proceedings were held out of the presence and hearing of the jury.)

Mr. Foreman: May I, as a preliminary to the motion, establish a fact upon which to base the motion, Your Honor?

Mr. Bottler: Your Honor, we suggest it is out of order at this time, to interrupt the Government's case on direct examination to start asking this witness questions which might or might not be appropriate on cross examination.

The Court: I understand counsel wants to make a statement.

Mr. Foreman: I wanted to establish as a fact, Your Honor, that statements have been made by this witness, which are statements, and testimony has been made by this witness, which are furnished to the Government as a part of the prosecution of this case. And having established that the Government has them or did have them, and has access to them and controls them, we want to ask, having established it—if the Government admits it we won't need to establish it—we want to ask that we be permitted access to them, so as to follow the testimony of this witness. As well as any written statements, any oral statements reduced to writing that are in their possession, or any statements made by this witness touching the subject matter of his testimony at this trial, so that we may ask for an order of the Court to produce for our inspection those relevant

statements or reports. That is what we would develop. It is under the authority of the Jencks case decided last Monday by the Supreme Court.

The Court: Are you finished?

Mr. Foreman: Yes.

The Court: What says the Government?

Mr. Wilkey: Your Honor, we think on any such motion on the authority of the Jencks case, the validity of the motion and the production of the instruments counsel demands has to be judged by the Court on the testimony of the witness, and until the witness' testimony is given, the Judge is not in a position, as I understand the Jencks case, to rule on whether or not such instruments or documents should be produced. That is point one.

Point two, it seems to me highly inappropriate and out of the orderly procedure for the defense to interrupt the presentation of the Government's case and make a motion and say, "We don't have the facts to make a motion but if you will let us examine the witness we will do so."

The Court: I don't understand there is a request to examine the witness.

Mr. Wilkey: That is what I understand.

Mr. Foreman: I told the Court—I wasn't fishing. I have had him on the witness stand four times. I know what his testimony will be, but I wanted the Court to know he had made such statements orally and in writing to the officers

of the Government, and authorities, which are in possession of the prosecuting attorney so the Court would know they are in existence.

The Court: As to what he may have told counsel for the Government orally, isn't that pretty well known to defense counsel and to every defendant? Hasn't the defense counsel and the defendants themselves heard him orally?

Mr. Foreman: No, sir.

The Court: At the previous trial of this case?

Mr. Foreman: What we have heard is his testimony, but as to what he may have told him, it is for the purpose of what he has told Mr. Main, perhaps Mr. Wilkey, Mr. Freeman, Mr. Bottler, Mr. Niendorf, or Mr. Gromatzky, against what his testimony is in court. That is the reason for our request, and we understand the reason for the rule, so we may have the benefit of any such statements and to weigh his testimony in the light of that statement.

The Court: You say as to what he may have told them. Did this witness testify at the previous trial of this case?

Mr. Foreman: Yes, Your Honor.

The Court: For how long did he testify?

Mr. Foreman: About two or three days.

The Court: Do you remember whether he testified two or three days, or more or less?

Mr. Foreman: I am certain it was more than two and a half days, and it may have been three and a half, Your Honor.

The Court: A witness that had—whose testimony would take two and a half to three and a half days in all probability has had lengthy and extended conversations with Government counsel and Government agents, and if it takes two and a half days for him to give his testimony, it may take 25 days to ascertain what he might have told Mr. Wilkey verbally, Mr. Bottler verbally, Mr. Main verbally, Mr. Ninedorf verbally, and others. It may take 50 days, and you would find there would be much repetition of what he has told—if you go into details of what he may have told Mr. Wilkey verbally, and then you go into what he may have told Mr. Bottler verbally. There would be some repetition no doubt, and when you get into what he told Mr. Main verbally there would be repetition, and so on. I want to know what the request is.

Mr. Foreman: May it please the Court, I didn't intend to ask this man anything except whether or not he had made—

The Court: I know, but you said, and I have read the Jencks case and I want to follow it, I intend to follow it, but I am trying—one of the duties of the judge of the court is to conduct an orderly trial, and I am making every effort to do that, and I think I am entitled to know what you will want to know what this witness may have told verbally to one or a dozen or two dozen people. How far

do you want to go with it? I think the Court is entitled to ask that question.

Mr. Foreman: I don't think I am entitled to go into anything but relevant statement and reports.

The Court: By reports, do you mean written reports?

Mr. Foreman: I mean written reports by those emissaries of the Federal Government that are in the possession of the prosecution.

The Court: Now, that is something concrete, but you have stated reports written and verbal. When we get into verbal reports from an untold number of people, I want to know how far you are going to go, and I think I am entitled to ask the question.

Mr. Foreman: I know it, Your Honor. I didn't use the word verbally.

The Court: I thought you did.

Mr. Foreman: I used the words "verbal statements."

The Court: Yes, excuse me. You did say—

Mr. Foreman: The distinction I make is any verbal statements he made that were later made in the form of a report by Mr. Main or any of the other officers of the Government who interviewed this witness to the prosecutors. I don't think that I have a right to interrupt the trial of the case and cross examine this man for an hour or two hours as to

anything, and I didn't plan to do that, or ask him anything but as to whether or not he had been interviewed, and I intended to ask Mr. Wilkey if the reports of the interview, if he had a written statement, and ask Mr. Wilkey if he had it. That is the extent of the interrogation.

The Court: You say now written statements.

Mr. Foreman: Any written statements that have been made that are now in the possession of the Government, yes, sir, or any verbal statements he may have made he did not sign, that the officer himself reduced to writing and turned over to the prosecution.

The Court: Would he know whether or not the officer reduced it to writing?

Mr. Foreman: No. He would know whether he made them, and Mr. Wilkey would know, and I intended to establish them, to ask Mr. Wilkey about them, and then to ask for them.

The Court: Very well. Now, Mr. Wilkey, you have raised a point this is premature.

Mr. Wilkey: Yes, Your Honor, on two grounds. It is premature under the Jencks decision itself, which states that the production of the statements is to be—can be demanded based on the testimony of the witness. Now, this witness hasn't testified yet. I am going to interrogate him at some length. It will then become apparent to the Court the extent of his testimony, and the defense may then, if it wishes, renew a request for any statements based upon the testimony of the witness, but we won't know what

that is until he testifies. That is under the Jencks case itself. The request is premature.

The Court: The only draft I have of the Jencks case is the New York Times draft. Do you have that?

Mr. Wilkey: Yes, Your Honor.

The Court: Could you point me to the portion you are speaking of by column, and where it appears in the column. It is an article of eight columns.

Mr. Wilkey: Fourth column, about one third of the way down.

The Court: "The practice"—does it start with a new paragraph?

Mr. Wilkey: Referring you first to about midway of the preceding paragraph, "We now hold that the petitioner was entitled to an order directing the Government to produce for inspection"—do you find that?

The Court: Yes.

Mr. Wilkey: —"all reports in its possession, written and, when orally made, as recorded by the Federal Bureau of Investigation touching the events and activities as to which they testified at the trial." All right. We won't know what reports touched the events and activities as to which they testified at the trial until they have testified.

Then, later on, in the next paragraph, beginning, "The practice,"—the one you first noted, Your Honor, down there—"for the purpose of production and inspection,"—

The Court: Where are you reading now?

Mr. Wilkey: The same column, about ten lines down in the next paragraph, beginning "The practice of producing." When the reports are show—

The Court: Let's see. I don't see it. "The practice of producing Government documents to the trial judge for his determination or relevancy and materiality without hearing the accused is disapproved." Is that where you mean?

Mr. Wilkey: Yes, the next sentence, Your Honor.

Mr. Foreman: Read that sentence again?

The Court: "For the purpose of production and inspection with a view to use on cross examination are established when the reports are shown to relate to the testimony of the witness."

Mr. Wilkey: Your Honor, we have to have the testimony first. That is the point. Exerything on the production is based on what the witness testifies about.

The Court: What says the defense?

Mr. Foreman: The theory of the prosecution—

The Court: I want to state this is the first time I have ever seen lawyers and judges working from newspapers.

Mr. Foreman: Your Honor, I don't have to. I have a copy of the original opinion.

Mr. Wilkey: Your Honor, there has been handed me a copy of the original opinion in order that we may not stray from it.

Mr. Foreman: Let's turn to page 1323 first and see what Chief Justice Marshall, a lawyer of some esteem, said about this situation back when he was Chief Justice of the Supreme Court.

Mr. Wilkey: Your Honor, I am operating with only the New York Times, and I will have to ask the indulgence of the Court until my counsel and I find it in the New York Times.

Mr. Foreman: There is a footnote, and I seriously doubt it is in the New York Times. Come around. We will share with you. It is for the strong and the weak alike Does the Court want me to read it?

The Court: Yes.

Mr. Foreman: This is a footnote at the bottom of Page 1323. It says: "See United States vs Burr, 25 Federal Cases 187, wherein Chief Justice Marshall, when confronted with a request for the inspection of a letter addressed to the President and in the possession of the attorney for the United States, stated, 'If a paper be in possession of the opposite party, what statement of its contents' "—

The Court: I don't see that.

Mr. Foreman: It is page—is yours numbered 1323?

The Court: Mine is—is it footnote 14?

Mr. Foreman: Footnote 12, Your Honor. I think they have got a Federal Reporter there.

The Court: All right. I now have it.

Mr. Foreman: Do you want me to continue?

The Court: Yes, sir.

Mr. Foreman: "Now, if a paper be in possession of the opposite party, what statement of its contents or applicability can be expected from the person who claims it producion, he not precisely knowing those contents? It is objected that the particular passages of the letter which are required are not pointed out, but how can this be done while the letter itself is withheld?"

If you substitute these reports or written statements for a letter, you would have the expression of the Chief Justice, but I say that the very last part of the opinion answers even more forcibly and without equivocation the Government's argument, and that is on Page 1327, Your Honor, the last sentence in the opinion of the majority reversing the Jencks case.

The Court: I don't—my pages are not numbered as yours.

Mr. Foreman: Your Honor, it is just before "reversed" in Judge Brennan's opinion, the leading opinion, the main opinion, the first opinion, and the opinion of the Court. It is the last sentence.

The Court: All right.

Mr. Foreman: This answers his statement as to why you should see it. This tries to pass the buck to the Court. This opinion says it is not the trial judge's burden at all, that it is the prosecutor's burden. He knows what this witness is going to say and knows what was in the report, and it is what he knows rather than what the trial judge knows. "The burden is the Government's, not to be shifted to the trial judge, to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attended upon a possible disclosure of state secrets and other confidential information in the Government's possession." In order for there to be any logic or validity in any position taking by the Government, through its prosecuting attorney, Mr. Wilkey, he would have to say that which would be a reflection on his intelligence to say, and which is not true, and that is that he does not know what this witness is going to say and therefore does not know whether the statements and reports in his possession bear on his testimony. What he means is this, the Court does not know, and his answer with reference—my answer is the answer of Justice Brennan and the majority of the Court in this opinion, which says it is not for the Court but for him to know and knowing it, he should there maintain the law.

Mr. Wilkey: In reference first to the footnote and then to the last sentence of the opinion, neither one deal with the time of the production of the documents. The footnote deals, I think, with the contents and how are we to know the contents and the defense know the contents?

It is true, the documents allegedly being in the possession of the Government we would know the contents. It is presumed so, and would have to produce those documents relating to the case without the defense showing the contents of the document.

The Court: The proposition of producing docoments is to assist the defense in his cross examination, is it not?

Mr. Wilkey: Precisely.

Mr. Foreman: And Your Honor, the documents, if produced at that time, would enable—I prepare my cross examination as the witness testifies. I have two pads, and one is solely for cross examination, and—

The Court: You prepare your cross examination from matters about which he does testify, don't you?

Mr. Foreman: Yes, Your Honor, and I would like to have those statements or reports to compare his present testimony, as I go along with his present testimony, with the statements or reports so as to know as to what material points, if any, his testimony differs. It not only, we think, is timely presented but in the expeditious discharge of the business of the Court would facilitate the trial of the case and avoid the request for a delay in order to compare any such staements or reports with testimony. In other words, we would not be ready to go—proceed with the cross examination without having compared the testimony, and being lengthy, Your Honor—I mean if it goes three or four days, as the other one did, it would take a number of hours to compare the statements with the testimony, whereas it could have been completed.

The Court: it seems that time is going to be required whether we do it now or then, will it not?

Mr. Foreman: I think that we can go along with the statements or reports as the witness testifies. I can, I think, assuming at any rate I would know better if I saw the reports.

The Court: Let me return to the Jencks case. I certainly don't want to enlarge on the Jencks case. "Relevancy and materiality for the purpose of production and inspection with a view to use on cross examination are established when the reports are shown to relate to the testimony of the witness. Only after inspection of the reports by the accused must the trial judge determine its admissibility, that is evidently questions of inconsistency, materiality, and relevancy of contents, and the methods to be employed for the determination of parts immaterial or irrelevant." They cite the Gordon case. I think the Government is within its rights in withholding it until the testimony is given. This witness, as many witnesses, may know more than he testified to, and as I read this case, this right is given for use on cross examination and the reports are shown to relate to the testimony of the witness. I agree with the government that it is not known until the witness has testified.

Mr. Foreman: Not known by the Court, as such, but the Court cannot agree or does not state that the Government doesn't know what the witness will testify.

The Court: I would suppose they know the general subject which they expect to interrogate him about, yes.

Mr. Foreman: So that it may appear at this point of the record and in connection with the discussion on all sides and the ruling of the Court, may be establish by a few questions the existence of the statements and the interviews.

The Court: When you get into interviews, if it can be done with a few questions, yes, but when you get into the interviews—

Mr. Foreman: I am not going to ask about the interviews or what was said.

The Court: It may take days to tell us about the interviews.

Mr. Foreman: It won't. I ask the indulgence of the Court.

Mr. Bottler: Your Honor, we would like to make the objection at this time, it disrupts the time-honored procedure of the Government being allowed to put on its witnesses, ask questions, develop its side of the case—

The Court: This is without the hearing of the jury and I will allow it.

9-2073 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. Heras, did you make a statement to United States Post Office Inspector W. D. Main?

A. Yes, I have.

Q. When and where?

A. I don't know the specific date, but it is—my guess

is that I have had about two or three interviews with him.

Q. Were each of the two or three interviews statements, written statements taken and signed?

A. I don't recall offhand whether they were signed or not.

Q. Well, were they in writing?

A. I believe one of them was in writing. I am not positive, but I think one of them was in writing.

Q. As a matter of fact, one of them you wrote out yourself in longhand and then made copies, several copies, one for Mr. Main, one for the Rangers, and one for the State prosecutor, didn't you?

A. No, I don't believe—I don't believe I made a statement covering—involving the three agencies. I think most of them were almost invariably to the same emissary, same agency of the government.

Q. Just now limited to Mr. W. D. Main, when and where in your best judgment did you make such statements as you made to him?

The Court: Mr. Foreman, aren't you going to want to go over this again in the presence of the jury?

Mr. Foreman: I don't know whether I will or not, Your Honor. I would like to see the statements first. I don't know why I should. It is something, I think, that should be developed in the absence of the jury. I don't have the statements, I never have had them. I now have a right to have them.

The Court: Don't you customarily interrogate witnesses

in the presence of the jury about statements they have made?

Mr. Foreman: It is all depending on the form of the statements. I don't do it unless I have to, unless I have seen a copy of the statement and know what is in it.

The Court: Very well. You may continue.

Q. (By Mr. Foreman) When and where did you give such statements as you made to W. D. Main?

A. My best recollection is that the first interview was made in Austin, Texas.

Q. And about when, sir?

A. It was about the month of May or June, 1953.

Q. And when was the next one and where?

A. I don't recall exactly where the next interview was held. I believe it was in Alice, Texas.

Q. Did you make a statement there?

A. I don't recall offhand whether I made a written statement or not.

Q. Did he take down notes of what you said, as you said it?

A. I don't recall exactly, but I think he did.

Q. Now, that was about when in Alice, Texas?

A. I believe that was the second time.

Q. In what place?

A. It was at at Alice Hotel or Motel, [Alice Motel—Hotel, in Alice.

Q. About when?

A. That was towards the last part of 1953 or the early part of 1954. I don't remember exactly just what time of the year it was, but one thing, I know it was late 1953 or the early part of 1954.

Q. Did you make a later and another statement to Mr. W. D. Main?

A. I don't beleive I did. I don't believe I made another statement to him after that.

Q. Did you have other interviews with him?

A. No, I don't recall. I don't think I made other interviews with him.

Q. Sir?

A. I don't think so.

Q. Do you know whether or not your testimony before the Duval County grand jury was furnished by him to Mr. Wilkey?

A. I don't know.

Q. You did so testify before the Duval County grand jury, did you not?

A. Yes, sir.

Q. And when, about, was this?

A. I think when I went before the Duval County grand jury was in—about the first—early part of February 1914. I'm not so sure about that, but I think that is about—that is my recollection.

Q. Was there only one such time, Mr. Heras?

A. Yes, as far as I can remember there was only one time I faced the Duval County grand jury.

Q. Now, you have testified here last November or December, in the former trial of this case, did you not?

A. Yes, sir.

Q. Were those statements that you made to Mr. W. D. Main concerning the testimony that you also gave at the former trial of this case?

Mr. Wilkey: May I have that question again?

Mr. Foreman: Read it, little lady.

The Official Reporter (Reading): "Where those statements that you made to Mr. W. D. Main concerning the testimony that you also gave at the former trial of this case?"

Q. (By Mr. Foreman) Were the facts that you gave or discussed in the statement, or the story you gave, was it the same set of circumstances or facts that you testified about at the former trial of this case?

A. Yes, sir.

Q. And do I presume now or know now that the testimony at this time will be the same as it was the last time?

Mr. Wilkey: Your Honor, that calls for a conclusion as to what we intend to ask him, which he doesn't know.

The Court: Objection sustained.

Q. If he asks the same questions at this trial—

The Court Mr. Foreman, you are getting out of what was permitted, and that is to ask him not about what he is going to testify about, but ask im about statements he has made in the past, not about what he is going to testify about in the future,

Mr. Foreman: I was only asking that question in view of the language of the Jencks case because it is one of the requisites to which I am entitled, if it is about the—if it is what it was then—

The Court: I don't know that the Jencks case says you

may interrupt the trial and have such examination as you are having now. That was given you by the grace of the Court, and not on the Jencks case, and given to you because you said you wanted to ask him about some statements previously made. I don't intend for you to go into future testimony. Let's let that speak for itself when the time comes.

Mr. Foreman: That is the only question I was going to ask, and I presumed it would be helpful to the Court in its ruling because of the language, but such statements must be touching the matter of the witness' testimony at the trail.

The Court: I think the Court will know the subject matter of his testimony when it is heard.

Mr. Foreman: I was hoping that if we could establish his testimony now, it would be the same as it was before—

The Court: I still wouldn't know what it was, Mr. Foreman.

Mr. Foreman: All right, sir. That is all. Wait a minute.

Did you make—likewise make statements to other Federal agencies or representatives, such as Federal Bureau of Investigation agents?

A. In connection with what, Mr. Foreman?

Q. In connection with the subject matter of your testimony at the trial?

A. No, sir.

Q. Did you make such statements concerning it to the Federal Bureau of Investigation agents?

A. No, sir.

Q. You haven't made any to any agent?

A. I have made commitments to the Internal Revenue agents of the internal revenue and agents of the Attorney General's office.

Q. The Attorney General of the State of Texas?

A. Yes, sir.

Q. And post office inspectors?

A. Yes, sir.

Q. And those were the only ones?

A. As far as I know.

Q. Then will you tell us which agents of the Bureau of Internal Revenue service to which such agents you made statements?

A. I made statements to internal revenue agents connected with the intelligence division, Mr. Niendorf and Mr. Henley, and I believe Mr. Dimler, I think, and I can't think of the other agent's name that I talked to. I believe you mentioned it a few minutes ago.

Q. Gromatzky?

A. Yes.

Q. And they took statements from you?

A. We conferred, but I don't recall offhand whether he took notes or not.

Q. Did you sign a statement?

A. No, I don't think I did.

Q. When were those several statements made? Were they all made at the same or different times?

A. Different times.

Q. Where?

A. Different times during the years 1953 and 1954. I don't recall exactly the intervals of meeting.

Q. Were they made in Benavides, Alice, or where?

A. Some of them were made in Benavides, yes. Some of them were made in Alice.

Q. Do you know which? Which places?

A. In Alice at the Alice Hotel, and I made one in Corpus also.

Q. In Alice you made it to whom?

A. I don't recall exactly the name of the Internal Revenue agent. I think his first name was Dave.

Q. Sir? Dave?

A. Yes.

Q. That was his first name?

A. I believe his first name was Dave.

Q. You don't know whether it was Niendorf or Gromatzky?

A. No, not Mr. Niendorf or Gromatzky. I just can't think of his surname. As far as I remember, his first name was Dave.

Q. Is this a different person than one whose last name you have heretofore given?

A. Yes.

Q. To whom did you make the one in Corpus Christi?

A. I don't recall exactly the names of the agents, but it was not—I don't think it was recorded. It was just an interview and I don't think it was put down, reduced to writing.

Q. Without regard to whether it was or not reduced to writing, what was the agent's name to whom you made the statement or by whom you were interviewed in Corpus Christi?

A. One was Mr. Niendorf, and I don't recall whether or not Mr. Henley was there and I believe Mr. Train was in the same office.

Q. Crain?

A. T-r-a-i-n, I believe his name is. He is with the Internal Revenue.

Q. Did you make a statement at any place to the Federal Bureau of Investigation in writing?

A. In connection with this case?

Q. Anything. Just anything.

Mr. Wilkey: It ought to be limited to this case, Your Honor. I think that is obvious.

Mr. Foreman: May it please the Court, this will be in connection with this case on cross examination. I just want to establish—

The Court: The question doesn't limit it to this case. I think that is the objection.

Q. (By Mr. Foreman) Will you please tell us when you made and what statements you made and to which agents, FBI agents, you made such a statement in writing?

Mr. Wilkey: About this case?

Mr. Foreman: I will get to the next question about that.

Mr. Wilkey: I will make the same objection.

The Court: Yes, I think it should be limited to this case. If he has been interviewed about other cases at other places, I don't think that is material.

Mr. Foreman: That would be leaving up to this witness to determine what a statement is about. I am the one

who is going to have to ask the questions. I don't know what I am going to ask. I will establish to the Court's satisacftion it will be about this case.

The Court: Very well.

Q. When did you make the statement to the FBI?

A. I don't recall the date or exactly whether to an FBI agent or intelligence government agent. I made a statement in August, about the latter part of 1953, I believe it was.

Q. Do you have in mind the statement to which I refer, or are you in doubt about it?

Mr. Wilkey: That calls for a conclusion.

The Court: You can lead him, Mr. Foreman.

Q. (By Mr. Foreman) I will rephrase the question. Talking about the statement concerning George B. Parr, the defendant in this case, having given you $15,000 to carry to an FBI agent, I think it is George Denton or Denison. That is the statement I am talking about. Where and when and to whom did you make that statement?

A. I didn't make that statement.

Q. Did you make a statement you did not make that statement?

A. Yes, sir.

Q. Now, that is the statement I am talking about. Where did you make it?

A. I don't recall whether it was in Corpus or in Alice.

Q. And to whom did you make it?

A. I don't recall the names of the persons. In fact, I

don't know whether the agents I was asked about were FBI agents or Internal Revenue agents.

Q. Do you know the name of any such person who was present when you made that statement?

A. No, I don't recall right now.

Q. Isn't it true that the statement about the $15,000 and George Denton was made in Benavides and was made to an FBI agent stationed in Houston, the officer in charge in Houston?

A. I don't recall exactly, Mr. Foreman. I don't recall exactly about that.

The Court: Are we near the end of this?

Mr. Foreman: Yes, Your Honor, as far as this man is concerned we are through. I would like to ask the prosecution as to whether, for this record and in order to have it tied to this part of the record in the case, about those statements and his having them or not having them, if the Court will permit me to do so.

The Court: Do you want to ask him if he has some specific statements?

Mr. Foreman: Yes, Your Honor.

The Court: How many statements are you going to ask him about?

Mr. Foreman: Every one this man has testified about.

The Court: Do you have a list?

Mr. Foreman: No, but while it is fresh in my mind, will you take the stand Mr. Wilkey?

The Court: Mr. Wilkey can answer from where he is seated.

Mr. Foreman: Very well.

Mr. Wilkey, do you have the statement of Diego Heras made to either an Internal Revenue Service representative or any member of the Federal Bureau of Investigation concerning the—his having made or not having made a statement that the Defendant George Parr had given him $15,000 to take to George Denton?

Mr. Wilkey: I have no such statement in my possession or in the possession of the office, to my knowledge.

Mr. Foreman: Have you had such a statement at any time since this case started to trial last month, in your files at this counsel table?

Mr. Wilkey: No, sir.

Mr. Foreman: Do you have any statements, have you ever had any statements, or do you know where such statement is?

Mr. Wilkey: A statement to the FBI in writing—a statement that the witness did not make such a statement or claim about George Parr and FBI Agent Denton?

Mr. Foreman: Sir, I don't know what is in the statement, only that the statement that the man says he made. Have you been furnished the statement?

Mr. Wilkey: I have seen such a statement at times past, to the effect that the witness did not make any such statement or claim about George Parr or FBI Agent Denton.

Mr. Foreman: When was the last time you saw it?

Mr. Wilkey: Probably last summer or early fall.

Mr. Foreman: Where did you see it?

Mr. Wilkey: In my office.

Mr. Foreman: Who had it?

Mr. Wilkey: It was in the possession of an FBI agent.

Mr. Foreman: Who?

Mr. Wilkey: I forget which one.

Mr. Foreman: Could you make it available? Is it subject to your orders now?

Mr. Wilkey: Such a statement is not subject to my orders, is not in my possession, and to my knowledge has never been in my possession or the possession of the office.

Mr. Foreman: Was it in your possession when you had it in your office?

Mr. Wilkey: I merely read it to the effect that this witness did not make such a statement about George Parr and FBI Agent Denton.

Mr. Foreman: With reference to the statement made to Mr. Main, W. D. Main, Postal Inspector, by this witness, do you have such statements?

Mr. Wilkey: I am sure that we have a statement made to Inspector Main by this witness.

Mr. Foreman: Signed by him?

Mr. Wilkey: Signed by the witness.

Mr. Foreman: All right.

Mr. Wilkey: I am not sure about that.

Mr. Foreman: Do you have only one such statement made to Postal Inspector Main? Or do you have more than one?

Mr. Wilkey: At this time I do not know.

Mr. Foreman: Well, have you seen more than one such statement?

Mr. Wilkey: I do not recall whether I have seen one or more than one statement made by the witness to W. D. Main.

Mr. Foreman: Mr. Wilkey, do you mean at this time by "I do not know," that you do not know whether you had more than one statement, or you do not know whether you had more than one statement at the time?

Mr. Wilkey: That applies to both. I do not know whether I have seen more than one statement and I do

not know whether I have more than one statement. I simply do not recall whether there has ever been furnished me more than one statement made by this witness to W. D. Main. I am reasonably certain I have one statement.

Mr. Foreman: At this time?

Mr. Wilkey: At this time.

Mr. Foreman: At your table?

Mr. Wilkey: No.

Mr. Foreman: Where would it be?

Mr. Wilkey: In my office desk.

Mr. Foreman: Was it here at the time of the Jencks decision?

Mr. Wilkey: It has never been in this court during this trial. I might add, there were a great part of our files not brought into the court.

The Court: I don't think the Jencks decision has anything to do with whether the statement rests in the court room or elsewhere.

Mr. Foreman: Have you any other statements made to Internal Revenue Agents Niendorf, Denler, Gromatzky, or the man named Dave, made by this witness?

Mr. Wilkey: I am sure we have one or more statements made to one or more of these agents. As to which one,

I don't know and I don't know whether they were signed by the witness or not.

Mr. Foreman: Whether they are or not, they are in writing in your files?

Mr. Wilkey: I believe there is one or more.

Mr. Foreman: Is there one or more?

Mr. Wilkey: I don't know at this time. I have not counted and I have not tried to check through which agents made, whether they were signed, interviews, or statements made by the witnesses themselves.

Mr. Foreman: Do you have the grand jury testimony of this witness before the Duval County grand jury?

Mr. Wilkey: I have seen question and answer statements by this witness that was made before a Duval County grand jury which was subsequently declared to be no legal grand jury, which does not in law constitute grand jury testimony.

Mr. Foreman: Had that been declared not to be a legal grand jury at the time you got the testimony?

Mr. Wilkey: I believe so.

Mr. Foreman: Where is that testimony, or those questions and answers?

Mr. Wilkey: In my files in my office.

Mr. Foreman: Here at the court house?

Mr. Wilkey: Yes, sir.

Mr. Foreman: Are there any other statements about which I have not asked, made either to you—I am not asking about Federal grand jury testimony. You do have testimony of this witness made before the Federal grand jury, have you not?

Mr. Wilkey: I do.

Mr. Foreman: Are there any other statements or reports of interviews, whether signed or not, by Diego Heras, made by him to any Federal officer or any State officer which you have in your possession other than the ones about which you have been asked and which you have stated?

Mr. Wilkey: That is a little duplicitous. You are a little confusing.

Mr. Foreman: I will try to make it simple enough for you to understand it.

Mr. Wilkey: I am not sure I know what you are getting at, and I am not sure I know whether you are entitled to ask me such questions about information I may have in the files concerning the prosecution of this case.

Mr. Bottler: Your Honor, I would like to point out at this juncture that the Court had permitted this inquiry by defense counsel, Mr. Foreman, to go to specific statements rather than a fishing expedition.

Mr. Foreman: May it please the Court, we could not

know what he has in the way of statements if he didn't tell us, and I am quite sure he wouldn't attempt to evade, sidestep or avoid.

The Court: Are we near the end of it?

Mr. Foreman: Yes, Your Honor.

Isn't it true you can get any statement from any Federal Government agency simply by asking for it?

Mr. Wilkey: No, sir, it is not true. There are laws and regulations prohibiting my access to documents in other agencies as to anyone else.

Mr. Foreman: In connection with any witness that might be offered by you as to any phase of the contents of these statements so made?

Mr. Wilkey: I don't know what the result would be in requesting the documents. I know there are procedures to go through.

The Court: I don't want the inquiry to go to what he may be able to get. I want it limited to what he has.

Mr. Foreman: Have you told us everything you have in the form of a statement by the witness or the report of an interview by an agent or representative of the Government of an interview with Diego Heras?

Mr. Wilkey: No, because there are numerous reports of agents that we may have in the files which may be their impressions or opinions on what the witness' testimony

will be, and further investigate efforts, and so on, which have not been inquired about. There may be other statements not touched on.

Mr. Foreman: How many such statements then which you have reference to in these last two qualifications of reports of interviews with this witness Diego Heras do you have?

Mr. Wilkey: I do not know, sir.

Mr. Foreman: Would you estimate the number?

Mr. Wilkey: I would not.

Mr. Foreman: Do you have as many as six or eight or ten?

Mr. Wilkey: I would not estimate the number. I don't think I am called upon to do so.

Mr. Foreman: I am calling on you now.

Mr. Wilkey: I don't think I could make an accurate estimate of what portion of our files concern Mr. Diego Heras.

Mr. Foreman: I am not asking you to estimate your files. I am simply asking you reports of interviews. Do you have such other reports of interviews with Diego Heras, not impressions, conclusions, or suggestion, but reports of interviews. Do you have any more such?

Mr. Wilkey: I think we do have some reports of interviews with Mr. Heras, and they contain other matters

than Mr. Heras' testimony or anticipated testimony.

Mr. Foreman: Regardless of what they might contain, do they contain statements to these officers or representatives of the Federal Government?

Mr. Wilkey: I think they do.

Mr. Foreman: Are you willing to make available to counsel for the defense in this case such statements or such reports of interviews?

Mr. Wilkey: I am—

Mr. Foreman: Wait a minute. Made by the agents or representatives of the Federal Government, either postal inspectors, internal revenue agents, FBI agents, or others, concerning the—for our inspection and in order to enable us better to cross examine the witness, Diego Heras, or do you claim the privileged nature of these communications and refuse to reveal such?

The Court: If he is going to make any such claim, I want him to make it. I don't want you to suggest it. Ask your question please.

Mr. Foreman: Are you willing to turn over to us for our inspection, that is to counsel for the defendants, each and all of these, and if not all, which are you willing to turn over to us for our inspection and examination, the better to determine the course of our cross examination of Diego Heras?

Mr. Wilkey: I am perfectly willing, at the proper time of the trial, which I conceive to be at the outset of the

cross examination of the witness, to turn over all statements made by Diego Heras, now in my possession, to agents of the postal inspector, Internal Revenue, or the FBI.

Mr. Foreman: When you say "Now in my possession," have you purposely placed out of your possession certain of these statements in the last three days?

Mr. Wilkey: I have not removed from any of our files any statements by any witness to any Government agents in the last three days or any other time.

Mr. Foreman: I am not asking "removed from your files."

Mr. Wilkey: Or put out of my possession or any such fashion you insinuate.

Mr. Foreman: I am asking, not insinuating, because your file is about one-third as thick.

Mr. Wilkey: We are about that far through with the case, and those are returned to the office files.

Mr. Foreman: But you refuse at this time, and until you have finished examination of the witness, to turn those over to us?

Mr. Wilkey: Under the law and the Jencks' decision and the ruling of the Court, I am going to do that at this time.

Mr. Foreman: That is all, Your Honor.

We ask for an order requiring and directing him to do so at this time, for the record.

The Court: Well, I am doing what I understand the Jencks case says, and that is—I have read it earlier—"Relevancy and materiality for the purposes of production and inspection with a view to use on cross examination are established when the reports are show to relate to the testimony of the witness," and I agree with the Government, I have no way of knowing what will relate to the testimony of the witness until I have heard the witness' testimony.

Mr. Foreman: And also seen the statements. Neither will we.

The Court: If I saw the statements now, I would not know until I have heard the testimony of the witness.

Mr. Foreman: We are not arguing with the Court, but we say the Court is, by this opinion, relieved of that.

The Court: I am not asking for further argument. I am ruling on your request, and that is that I will have no way of ruling on your request until I have heard the testimony of the witness, which I have not heard, so ruling on the request is deferred until the Court and jury have heard the testimony of the witness. The jury—I just sent word to the jury they would be excused until 3:30. I didn't know we were going to collapse so soon, so Court will stand at recess until 3:30.

Mr. Wilkey: Your Honor, if I may, while this is out of the presence of the jury, I would like to add one thing

while this witness is on the stand, pertaining to this. I would like to ask him a couple of questions.

Mr. Foreman: Did the Court rule he might do so?

The Court: Yes, you may.

Mr. Wilkey: In regard to the statements and interviews with Inspector W. D. Main, could you be mistaken as to the date of the interview? Could you be mistaken as to the date of the interview? Could it be in the year 1954 instead of 1953?

The Court: Well, he wasn't definite about when it was at the time he suggested it, so I don't think you will help us.

Mr. Foreman: He said May or June of 1953, and he has so sworn twice in State Court.

The Court: I will say out of the presence of the jury, I assume he could be mistaken about dates that far back, but if there are such statements and if they are dated, I assume that they will speak for themselves unless the statements or dates have been fabricated.

Mr. Foreman: May it please the Court, solely as an assist to the prosecutor, he is right about the dates in June and I think Mr. Main has testified in what year, but in another trial.

Mr. Wilkey: You mean the witness is correct?

Mr. Foreman: May and June of 1953.

Mr. Wilkey: I was asking for information. I was doing my best to make the record as clear as I thought it was.

Mr. Foreman: It is clear.

The Court: And to locate the statements he is speaking of?

Mr. Foreman: To help him furnish us what we need.

The Court: Very well. Court will recess until 3:30.

(Short recess.)

The Court: Be seated, please.

(The following proceedings were held in the presence and hearing of the jury.)

9-2096 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Wilkey) Mr. Heras, did you ever work for the Benavides Independent School District?

A. Yes, sir.

Q. When did you start working for them?

A. About the year 1930 or '31.

Q. And when did you quit working for them?

A. About December of 1952.

Q. All right, sir. How were you employed by the Benavides ndependent School District?

A. I was employed in the capacity of deputy tax assessor and collector

Q. All right, sir.

A. And for many years, and then I was appointed acting secretary of the school board around the middle of 1938.

Q. All right, sir. Did you—when did you cease being the acting secretary of the school board?

A. It was during the month of July, 1951.

Q. After July of 1951, were you still deputy tax collector-assessor until December 1952?

A. Yes, sir.

Q. Referring to the period now during 1949 through July of 1951, what were you principal duties?

A. I was in charge of the preparation of the tax rolls and the management of the business office or in connection with the bookkeeping department of the School District.

Q. Now, at the present time, how are you employed?

A. Mr. Wilkey, you mean this day?

Q. Yes, here in 1957?

A. I am employed by Pritchard & Abbott.

Q. What do they do?

A. Valuation service.

Q. Is that here in Houston?

A. Here in Houston, yes, sir.

Q. In the years 1949 until July 1—until June of 1951, where was the office in which you worked?

A. The office was located in the Parr Building in the town of San Diego, Texas.

Q. Is San Diego in the Benavides Independent School District?

A. No, sir.

Q. Now, after July, 1951, where did you work?

A. I worked in the office of the School District, in the town of Benavides, Texas.

Q. In Benavides?

A. Yes, sir.

Q. Who was the secretary of the school board during the years 1949 through 1954, until February of 1954?

A. 1949, the best I recall, through 1950 or '51, Mr. D. C. Chapa was the secretary of the school board, and the tax assessor and collector.

Q. In regard to the secretaryship after 1950 or 1951, who was the secretary?

A. Mr. Oscar Carrillo acquired the office of secretary in either 1950 or 1951.

Q. All right. Now, then, after you ceased being acting secretary in 1951, who assumed the duties of secretary you had been performing up to that time?

A. Was that the period from July, 1951 to 1952 or 1953?

Q. Yes, during the latter part of 1951 and the year 1952, in which you were still with the tax office as a deputy tax assessor-collector, but had ceased being acting secretary, who performed the duties of the secretary's job?

A. Mr. Oscar Carrillo.

Q. Back to the offices there in San Diego in the years 1949 through July, 1951, will you describe the layout of those offices there, who worked there, how many rooms there were, and so on?

Mr. Foreman: May it please the Court, we suggest it would be easier on the witness and reduce the number of words in the question, and therefore save time, to have the chart on the back here, undisputedly that is an accurate

chart, and it is my recollection it was there. Was your question about the Benavides office or San Diego?

Mr. Wilkey: Your Honor, I was asking about San Diego. My recollection may be hazy. The chart we had was about Benavides.

The Court: Is that the office of the Benavides Independent School District in San Diego?

Mr. Wilkey: Yes, the Parr Building office he testified he worked in in 1949, 1950 and half of 1951.

Mr. Foreman: I am sorry. I misconceived the question.

Q. (By Mr. Wilkey) To save time, will you draw us a little plan of the office of the Parr Building where you worked in 1949, 1950 and half of 1951? Mr. Heras, just go up to the blackboard, if you will, and facing the jury, draw a plan of the Parr office building there in San Diego in which you worked.

A. (Witness complies with counsel's request.)

Q. Now, sir, will you indicate Mr. Parr's office?

A. (Witness complies with counsel's request.)

Q. All right. In order that we may refer to those rooms —we will put the rooms in later. Who else had offices there, and indicate if you will by putting the names in the individual offices?

A. (Indicating.) I believe I will term that the "general office."

Q. All right.

A. Those are doors.

Q. There are doors into the reception and into the general office, is that correct?

A. Yes.

Q. Just for clarity, where are the streets that go by this office on each side? The main highway to San Diego?

A. Yes (indicating).

Q. Is there a street on the east side?

A. Yes, sir (indicating).

Q. All right, sir.

A. I don't know what the name of that street is. There is a street on the east side of the building.

Q. All right. The Parr Building there, you have indicated Mr. Parr had his office, Mr. Earl Delaney, Mr. Benson, and there was a general office and reception room?

A. Yes.

Q. In the years 1949, 1950, and the first half of 1951, you worked in the general office?

You can take the stand now and answer from there.

A. (Witness complies with counsel's request.)

Q. You worked in the general office?

A. We maintained a staff of about the average of five or six employees—four or five employees in the general office. The business conducted by the staff was for different organizations, there was the City of San Diego, the City of Benavides, the City of San Diego School District and the Benavides School District and two other companies.

Q. You say the business of the organizations, the City of San Diego, the City of Benavides, the Benavides Independent School District and the San Diego Independent School District. What records in relation to those four governmental units were kept there in that building in general?

A. In general, the financial records of all of those organizations were kept in that office.

Q. All right, sir.

Mr. Foreman: There was some word in there I missed. Would you read that to me?

The Official Reporter (Reading): "In general, the financial records of all of those organizations were kept in that office."

Q. (By Mr. Wilkey) What was Mr. Benson's job there?

A. He was, for one, auditor for the Benavides Independent School District.

Q. What else did he do?

A. And he was also in charge of the bookkeeping records of the City of Benavides and the City of San Diego—yes, the San Diego School District, and he was auditor for two or three different oil concerns.

Q. Did he perform any service for Mr. Parr or Mr. Delaney?

A. Yes, sir.

Q. What were they?

A. Mr. Benson kept books for Mr. Parr and for his company, known as the Parr & Delaney Oil Company, and he also kept records for the Parr Oil Corporation.

Q. Who was your immediate supervisor there in the work that you did?

A. Mr. Benson.

Q. All right. Now, then, in your work—was that true during what period of time?

A. That covered a period from many years.

Q. When did Mr. Benson cease his connection with the School District, the Benavides Independent School District?

A. It was about the—during the month of June, 1950.

Q. Was that about a year before you left the office there to go back to Benavides?

A. Approximately, about a year.

Q. After June of 1950, did Mr. Benson have any connection with the School District or supervision over you?

A. No, other than I would consult him on several high points of the bookkeeping part of it.

Q. I see.

Mr. Foreman: Wait a minute. Consult him on the high points of what?

A. Of bookkeeping.

Q. (By Mr. Wilkey) You mean on the details of bookkeeping, when you had a question about it?

A. Yes.

Q. Now, then, as acting secretary of the Benavides Independent School District, what were your duties?

A. I was in charge of keeping the books of the School District, the financial books, records, prepare the payrolls, write out the checks, enter the disbursements, and income of the School District in the books.

Q. After the checks were written out in the years 1949 and 1950, up until June of 1950, who signed the checks as maker down in the lower righthand corner? I should say up until July 1951, who signed the checks as maker?

A. I would sign those checks in some instances, in the capacity of acting secretary.

Q. All right, sir. Were there other persons who signed them?

A. In other cases, the secretary, Mr. D. C. Chapa, would sign on the lower righthand corner.

Q. Now then—

Mr. Foreman: In other cases, the secretary—

A. Yes.

Mr. Foreman: Mr. D. C. Chapa?

A. Yes.

Q. (By Mr. Wilkey) Now, then, as to the countersignature on the checks in the year 1949 and up until the year 1950, who would sign in the countersignature place on the end?

A. That place was signed by Mr. W. M. Benson.

Q. All right. After June 1950, who countersigned the checks?

A. After that date, the checks were countersigned by Mr. George B. Parr.

Q. All right, sir. Now, as acting secretary of the Benavides Independent School District, did you ever write up any minutes of the meetings of the Board?

A. Yes.

Mr. Foreman: May it please the Court, we would like to know if it is understood that we have a running bill as to all witnesses, including this witness, as to the acts, conduct, or practices prior to September 1, 1951? It is our recollection, but so much time has elapsed, that we did have that.

The Court: I believe that was established earlier in the trial.

Mr. Foreman: We, of course, think that each and all of this testimony should be limited by the Government as to the counts and as to the defendants the Government contends it applies.

The Court: You may have the bill.

Mr. Wilkey: The Government offers this on all counts, against all defendants in regard to the scheme to defraud that was perpetrated and as to the conspiracy on the 20th Count.

The Court: Very well. You may continue.

Q. (By Mr. Wilkey) Now, then, as regards to the matters of the minutes of the board, did you ever write any of those up?

A. Yes, sir.

Q. How did you prepare those, by typewriter, in longhand, or how?

A. I would take notes of the transactions discussed or made at the board meetings in longhand, and then I would typewrite the notes on minute-book paper.

Q. All right, sir. Did you ever write up any official minutes in longhand as a final draft?

A. No, sir.

Q. Did anyone besides you ever take any notes at the meetings and give you for inclusion in the minutes?

A. In some cases, I was not present at the board meetings and Mr. Chapa or Mr. Milligan would jot down or write down the proceedings, and I would write—the notations, you know, in typewriter.

Q. In regard to notes of the board meetings, those given to you by Mr. Chapa, in what language were they?

A. As I recall, some of these notes were picked up in English and Spanish.

Q. In both English and Spanish?

A. Yes, and I would translate them and put them in the English language.

Q. In regard to checks of the Benavides Independent

School District which you prepared, did you ever write any checks, prepare any checks on the Benavides Independent School District funds drawn to fictitious persons?

A. Yes.

Q. All right. Will you tell the jury just how, to your knowledge, the preparation of these checks drawn to fictitious persons, started or began?

A. I believe this practice started in 1948. I don't know exactly the time during the year of 1948, but I had the knowledge of making, writing checks to non-existent persons.

Q. All right, sir. How did it originate?

A. The first case, as I recall, was one time that Mr. Parr came in to see Mr. Benson, and he conferred with him, I don't know, five or ten minutes, and I was then given a list of names and amounts for checks to be drawn.

Q. Who gave you the list of names and amounts?

A. I don't recall whether it was Mr. Benson or Mr. Parr at that time.

Mr. Foreman: We ask that this testimony be limited to George B. Parr, and object to it on the behalf of each of the other defendants.

Mr. Wilkey: Your Honor, it is offered as against all defendants on the general scheme to defraud, and on the conspiracy. So far I have asked him about acts. I haven't gone to conversations.

Mr. Foreman: We will object to it as hearsay to all defendants but Mr. Parr.

The Court: Objection overruled, and it will be received.

as to all defendants on the general scheme and artifice to defraud, and on the conspiracy count.

Mr. Foreman: Is it received on all counts, Your Honor?

The Court: Yes, sir.

Q. (By Mr. Wilkey) You say that this list was given to you, this list of names and amounts, was given to you at that time by either Mr. Benson or Mr. Parr. Do you know in whose handwriting the list was?

A. As I recall, the handwriting was that of Mr. Parr.

Q. Are you familiar with Mr. Parr's handwriting from association there in the office with him?

A. Yes, sir.

Q. What did you do with the list?

A. I would proceed to write out the checks to the different—to the different names given on the piece of paper.

Q. And after you wrote the checks out to those names and those amounts, who signed the checks in the place of maker down at the bottom in the righthand corner?

A. After I had written the checks and run them through the protectograph, I would sign my name on the lower righthand side as acting secretary of the school board.

Q. All right, sir, and on this original bunch of 1948, sometime in 1948, do you recall who countersigned them?

A. I think Mr. Benson countersigned them.

Q. After they were prepared, signed and countersigned, what did you do with the checks?

A. I would deliver them to Mr. Parr at his instructions.

Q. To Mr. Parr?

A. Yes.

Q. Did you ever see those checks again in reference

to this first instance here of 1948 or so, did you ever see those checks again that you prepared?

A. Yes, sir.

Q. When did you see them?

A. I would see those checks again at the end of the month when the bank would give the School District the monthly statement of canceled checks.

Q. All right, sir. Was it part of your job to look over the bank statements and canceled checks when they were returned each month?

A. Yes, sir, it was part of my job. It was done in order to reconcile the balance in the bank with the balance in my books.

Q. Like you would balance your own personal account each month?

A. Yes.

Q. Now, then, did this occur again after this first time in regard to the list of fictitious names and amounts?

A. Yes, sir.

Q. Did it occur several times.

A. Yes, sir.

Q. Now, then, on subsequent occurrences, did you do anything with the checks except give the checks back to Mr. Parr?

A. Yes, sir.

Q. What did you do with the checks?

A. In other cases, I was instructed to take the checks to the bank.

Q. Who gave you those instructions to take the checks to the bank?

A. Mr. Parr.

Q. And did you go to the bank?

A. Yes, sir.

Q. Whom did you contact at the bank?

A. I would go to the Texas State Bank at Alice, Texas, and I would contact Mr. B. F. Donald, cashier of the bank.

Q. All right, sir, and when you contacted Mr. Donald, where would you find him?

A. Mr. Donald was almost invariably in his room, I would say, there at the bank.

Q. Very well. When you contacted Mr. Donald in his room or office there at the bank, what would happen?

A. I would give the checks to Mr. Donald and he would verify the amount by running the tape.

Mr. Foreman: We object to this as to all defendants except B. F. Donald, and respectfully request such testimony, acts or conversations of the witness as to B. F. Donald be limited to B. F. Donald and excluded as to the other defendants as hearsay as to the other defendants except B. F. Donald.

The Court: Does the objection go to conversations only?

Mr. Foreman: Conversations, acts or conduct, may it please the Court, by this defendant and B. F. Donald.

The Court: What says the Government?

Mr. Wilkey: It is offered, Your Honor, as to the scheme to defraud which is alleged in the indictment as to all defendants, and also on the first 19 and the conspiracy count, the 20th count.

The Court: It will be so received and the objection is overruled.

Q. (By Mr. Wilkey) All right. Mr. Heras, after you would give the checks to Mr. Donald and he would run a tape on them to verify the amount, what next would occur?

A. He would then get the amount of money represented by the checks from the different tellers' cages or drawers.

Mr. Foreman: I didn't get that. Get the amount of money—may I ask that the witness speak a little louder, Your Honor?

The Court: Yes. Speak out a little louder please, and distinctly.

Mr. Foreman: Would you read the last answer, please?

The Official Reporter (Reading): "Answer: He would then get the amount of money represented by the checks from the different tellers' cages or drawers."

Q. (By Mr. Wilkey) After he got the money from the tellers' cages or drawers himself, what would he do with the money?

A. He would put the money in an envelope, seal the envelope, and deliver it to me.

Q. Very well. What did you do with the envelope?

A. I would return to San Diego and deliver the envelope to Mr. Parr.

Q. All right, sir. Over what period of time did these transactions of writing the fictitious checks, taking them to the bank to Mr. Donald, and getting the money and returning the money to Mr. Parr, over what period of time did these transactions take place, to your knowledge?

A. To my knowledge it was during the period 1949—between 1949 and the middle of 1951.

Q. Did that continue to your knowledge up until the time in July 1951 when you ceased being acting secretary of the School District?

A. I am inclined to believe that it was continued.

Mr. Foreman: May it please the Court, we object to that.

The Court: Yes, the objection is sustained and the jury is instructed not to consider the answer.

Q. (By Mr. Wilkey) How often, Mr. Heras, did you go to the bank and pick up this money for Mr. Parr?

A. I don't recall. I can't say specifically whether it was one or two or three times, but I believe it was once or twice a month.

Q. Either once or twice a month?

A. Yes, sir.

Q. Was that true in the year 1949?

A. I believe so.

Q. Was that true in the year 1950?

A. I think so.

Q. Was it true in the first half of 1951, up until the time you ceased to be acting secretary of the School District?

A. Yes, sir.

Q. About how many checks did you take to the bank to get the cash for them?

A. I don't remember exactly, but I think it averaged from three to ten or fifteen checks.

Q. Three to ten or fifteen checks?

A. Yes. It varied. Sometimes there were three checks

or four checks, sometimes five, and in some cases eleven, twelve or thirteen checks.

Q. Were they checks you prepared yourself?

A. Yes, sir.

Q. Where did you get the names and amounts to put on those checks?

A. I would get the list of names from Mr. Parr.

Q. After the first time when Mr. Benson gave you the list in either his or Mr. Parr's handwriting, after that time who gave up the list of names?

A. Mr. Parr.

Q. Where did he give it to you?

A. Sometimes he would come into my office and deliver the list to me, and sometimes he would call me into his office and he would deliver it to me there in his office.

Q. Now, how much—can you give us the figures as to the minimum and maximum those checks would total up to, that is the amount of cash you would get at the bank and return to Mr. Parr?

A. I believe the smallest amount was about $3,000 or $4,000.

Q. What was the largest?

A. The largest, I think, was $15,000.

Q. I want to show you what has been identified here as Government's Exhibit 17-A, B, and et cetera, through 17-P and ask you if you have seen these checks before?

A. Yes, I have.

Q. All right. In regard to Exhibit 17-A, I will ask you who prepared that check?

A. I did.

Q. Whose signature is that in the place of maker?

A. This is my signature.

Q. Whose countersignature?

A. Mr. G. B. Parr's.

Q. Is there such a person as Martin C. Urtado?

A. No, sir.

Q. To your knowledge, was this work here indicated done?

A. No, sir.

Q. 17-B, who prepared this check?

A. I did.

Q. Who signed it?

A. I did.

Q. Whose countersignature it that?

A. Mr. Parr's.

Q. Does Alfred L. Alcaraz exist, to your knowledge?

A. No, sir, not to my knowledge.

Q. Was this work done?

A. No, sir.

Q. 17-C, who prepared this check?

A. I did.

Q. Who signed it?

A. I did.

Q. Whose countersignature is that?

A. Mr. G. B. Parr's signature.

Q. Does Leonardo J. Parras exist?

A. No, sir, not to my knowledge.

Q. Was this work done, to your knowledge?

A. No, sir.

Q. 17-D, who prepared this check?

A. I did.

Q. Who signed it as the acting secretary?

A. That is my signature.

Q. Who signed it as the acting secretary?

A. That is my signature.

Q. Who signed the countersignature?

A. G. B. Parr.
Q. Does Jose L. Mondragon exist, to your knowledge?
A. No, sir.
Q. Was this work done?
A. No, sir.
Q. 17-E, who prepared this check?
A. I did.
Q. Who signed as acting secretary?
A. That is my signature.
Q. Who signed the countersignature?
A. G. B. Parr.
Q. Does Arturo S. Licona exist?
A. Not to my knowledge.
Q. Where did you get that name?
A. It was one of the names that was listed on that piece of paper.
Q. All right. 17-F, who prepared this?
A. I did.
Q. Who signed as acting secretary?
A. That is my signature.
Q. Who signed the countersignature?
A. G. B. Parr.
Q. Pedro C. Medrano, does he exist to your knowledge?
A. No, sir, not to my knowledge.
Q. 17-G, who prepared this?
A. I did.
Q. Who signed it?
A. That is my signature.
Q. Who signed in the countersignature?
A. G. B. Parr.
Q. Does Julian R. Toledano exist to your knowledge?
A. No, sir.
Q. Was this work done?

A. No, sir.

Q. Where did you get that name?

A. It was one of the names listed on that list.

Q. 17-H, did you prepare this check?

A. Yes, sir.

Q. Who signed it?

A. I did.

Q. Who signed the countersignature?

A. G. B. Parr.

Q. Does Leandro G. Villanueva exist, to your knowledge?

A. No, sir.

Q. Who prepared 17-I, this check?

A. I did.

Q. Who signed it?

A. That is my signature.

Q Who signed the countersignature?

A. G. B. Parr.

Q. Is there any such person as Ricardo M. Losoya?

A. Not to my knowledge.

Q. Where did you get that name?

A. That is one of the names listed on the piece of paper handed me.

Q. 17-J, who prepared this?

A. I did.

Q. Who signed it?

A. I did.

Q. And whose countersignature?

A. G. B. Parr.

Q. Does Jose M. Altamirano exist, to your knowledge?

A. No, sir.

Q. Did he exist at the time you prepared that check?

A. Not to my knowledge.

Q. 17-K, who prepared this check?
A. I did.
Q. Who signed it?
A. I did.
Q. And whose countersignature is it?
A. Mr. G. B. Parr's.
Q. Was this business of drapery and stage equipment for the auditorium ever supplied, to your knowledge?
A. No, sir.
Q. Does Arcadio F. Gutierrez exist, to your knowledge?
A. No, sir.
Q. 17-L, who prepare this?
A. I did.
Q. Who signed it?
A. I did.
Q. Whose countersignature is that?
A. Mr. G. B. Parr's.
Q. Does Antonio T. Fernandez exist?
A. No, sir.
Q. Did he at the time you made this check out?
A. Not to my knowledge at that time.
Q. 17-M, who prepared this check?
A. I did.
Q. Who signed it?
A. That is my signature.
Q. Who signed the countersignature?
A. G. B. Parr.
Q. Does Isidro S. Carmona exist, to your knowledge?
A. No, sir.
Q. 17-N, did you sign this check?
A. Yes, sir.
Q. Whose countersignature?
A. G. B. Parr's.

Q. Does Juan R. Salamanca exist, to your knowledge?
A. No, sir.
Q. 17-O, who signed as acting secretary?
A. I did.
Q. Who signed the countersignature?
A. He did.
Q. Does Jose H. Mondragon exist?

Mr. Foreman: You mean O, don't you, instead of C? You said 17-C, I think. Is it C or O you are on now?

Mr. Wilkey: There is a 17-C, Leonardo J. Parras, which we have already asked about. This is 17-0.

Mr. Foreman: I think you said C instead of O.

Mr. Wilkey: I am sorry.
In regard to 17-O, who signed as acting secretary?

A. I did.
Q. Who countersigned?
A. G. B. Parr.
Q. Does Jose H. Mondragon exist?
A. No.
Q. Did he on the date this check was drawn, to your knowledge?
A. No, sir.
Q. How long have you lived in Duval County?
A. All my life.
Q. 17-P, who prepared this check?
A. I did.
Q. Who signed as acting secretary?
A. That is my signature.
Q. Who signed the countersignature?

A. G. B. Parr.

Q. Did you ever know a Ferman S. Saldivar?

A. No, sir.

Q. Where did you get that name?

A. One of the names appearing on the list?

Q. Given to you by whom?

A. G. B. Parr.

Q. Was this work ever done?

A. Not to my knowledge.

Q. In regard to these checks here, 17-A through P, what did you do with those checks after they were made up and signed by you and Mr. Parr.

A. I would take them to the bank to get the cash.

Q. All right, sir.

A. I mean the Texas State Bank at Alice, Texas.

Q. Now, then, did you ever deal with anyone at the Texas State Bank at Alice besides Mr. Tom Donald on any occasion?

A. Yes, I had need of contacting other persons besides Mr. Donald.

Q. Who did you contact?

A. The other person other than Mr. Donald I contacted was Carl Williams.

Q. Who was Carl Williams at the time you contacted him?

A. Mr. Williams was a teller.

Q. How did it occur you went to Mr. Williams instead of Mr. Donald?

A. Mr. Donald was not available when I went to the bank. When I was in the bank he was not available. He was not in the bank.

Q. All right, sir. Did you contact Mr. Williams at the teller's cage?

A. Yes, sir.

Q. What occurred?

A. It was either that time or the second time that I went to the bank that I had to see any person other than Mr. Donald, that Mr. Williams wanted me to sign or endorse the checks with the payee's name by me.

Q. What were these checks you presented to him for payment?

A. They were just made out to persons listed on that piece of paper that was given to me and directed to make checks out for.

Q. Made out to fictitious persons or real persons?

A. To my knowledge all the names that appeared on the list and checks for which I made or names — I say checks that I made out to my knowledge were non-existent, to my knowledge.

Q. Were they some of the checks you were presenting there to Mr. Williams at the teller's cage?

A. Yes.

Q. They had no endorsement of the payee on the back?

A. Yes, sir, they had no endorsement on the back.

Q. After Mr. Williams asked you to endorse them, what did you do?

A. I refused to endorse them.

Q. And what next occurred?

A. We were discussing the endorsement on the checks when Mr. Donald came in, and he saw me there and he saw me there and he immediately came to the teller's cage window and talked to Mr. Williams. I didn't hear the conversation but after they finished talking, he directed Mr. Williams to go ahead and cash the checks without an endorsement.

Mr. Foreman: May it please the Court, these have been through the jury four or five times, this same series of checks.

Mr. Wilkey: Well, we have had a little interruption, Your Honor, unfortunately in this trial and I thought it would be good for the jury to see the evidence.

The Court: They were passed to the jury when Mr. Williams testified, as I recall, and I think they were considered by the jury at that time in connection with Mr. Williams' testimony, is that correct?

Mr. Wilkey: I believe that is correct, Your Honor.

Mr. Foreman: It isn't their being passed, but it is not my understanding an exhibit, every time there is testimony on it, goes back to the jury.

The Court: I don't think it is necessary.

Mr. Foreman: Yes, and furthermore I would need them right now to be preparing my cross examination.

The Court: Very well. They will be made available to you.

Q. (By Mr. Wilkey) Back to Mr. Carl Williams and the checks you cashed at his window, after the checks were turned over to him without you putting your endorsement on them, what next occurred?

A. Mr. Williams cashed the checks for me without any endorsement at all, and to my best recollection, he did not put the teller's stamp on them.

Q. What did you do with the money that you got from Mr. Williams there at the window?

A. I put the money in an envelope.

Mr. Foreman: Pardon me, Would you read that back to me?

The Official Reporter (Reading): "Answer: Mr. Williams cashed the checks for me without any endorsement at all, and to my best recollection, he did not put the teller's stamp on them.

"Question: What did you do with the money that you got from Mr. Williams there at the window?

"Answer: I put the money in an envelope."

Q. (By Mr. Wilkey) What did you do with the cash you got from Mr. Williams?

A. Mr. Williams put the money in an envelope and sealed it and gave it to me.

Q. What did you do with the envelope with the money in it?

A. I returned it to San Diego and delivered it to Mr. Parr.

Q. Did you ever have any conversation with Mr. Parr about putting or not putting the endorsements on those checks?

A. Yes, I came on back to San Diego and looked up Mr. Parr and delivered him the money or the envelope and told him what had happened at the bank. When Mr. Williams gave me the money in an envelope, Mr. Donald asked me to tell Mr. Parr to call him as soon as I got there.

Q. Did you tell Mr. Parr that?

A. Yes.

Q. What, if anything, happened?

A. Mr. Parr picked up the telephone and called Mr. Donald.

Q. After that conversation, was anything said by Mr. Parr to you about the endorsements?

A. Yes. He told me that if—that from then on, before taking the checks to the bank, he asked me to endorse the checks with the payee's name.

Q. With the payee's name, not your own, is that correct?

A. Yes.

Q. After that instruction from Mr. Parr, what practice did you follow with regard to the endorsements on the back of the checks?

A. In some case, I would endorse the payee's name. In other cases, the checks were not endorsed at all, but were cashed.

Q. All right, sir. Now, besides Mr. Donald and Mr. Williams at the bank, did you ever go to another teller's cage or office of the bank in order to cash these envelopes or checks?

A. Yes. In one instance that I went to the bank that Mr. Donald was not in and neither was Mr. Williams. I had to contact another teller.

Q. Who was that?

A. To my best recollection, it was Mrs. Edna Fitch.

Q. What occurred in this transaction with Mrs. Edna Fitch?

A. I contacted Mrs. Fitch and told her what I wanted, and she verified the amount and she shortchanged me that time. That is perhaps one reason I recall the incident.

Q. What amount were you supposed—

Mr. Foreman: May it please the Court, we object to the voluntary remarks of the witness and ask that he answer the question and limit it to the answer.

The Court: Yes, I will instruct the witness not to comment on the testimony. Just answer the questions asked and not volunteer any information.

A. Yes, sir. I am sorry.

Q. Mr. Heras, what amount were you supposed to get?

A. I believe it was $4,000.

Q. Was that the total of the checks that you had there to present to her?

A. That was the total of the check I was supposed to get.

Q. Did anything occur at the cage there while you were there that you recall?

A. Yes, sir.

Q. What occurred?

A. The result of that was that I was short $1,000. I got $3,000 instead of $4,000.

Q. When did you discover you only had $3,000 instead of $4,000?

A. It was when I was on my way from Alice to San Diego, about halfway.

Q. Had you ever dealt with Mrs. Fitch before in these bundles-of-checks transactions?

A. No, sir.

Q Did she give you the money loose, or give it to you in envelopes, or just how?

A. She put the money in an envelope, but she failed to seal the envelope.

Q. What occurred about halfway from Alice to San Diego?

A. I put the envelope by the side of me and I was driving towards San Diego. I had driven about five miles, halfway, when I glanced at the contents of the envelope and I saw three batches of bills and I knew that I had to have four, so I stopped the car and counted the money and learned that there was only $3,000 instead of $4,000.

Q. What did you next do?

A. I kept on driving to San Diego and when I arrived at the office, I went—I called the bank immediately and talked to Mrs. Fitch, told her what I had discovered.

Q. All right. What next occurred?

A. She told me to hold the phone, hold the line a few minutes while she made a quick check of her drawer, which she did, and she discovered that she was over a thousand dollars and told me to come back and pick it up.

Q. What did you do then?

A. I went on back to Alice and picked up the extra thousand dollars.

Q. After you got your full $4,000, what did you do with the money?

A. Delivered it to Mr. Parr.

Q. Did you see Mrs. Fitch in the next few days after that instance of the shortchanging?

A. Yes. I believe I saw her the following day. I went to the bank.

Q. What was your purpose in this visit to the bank?

A. I don't recall whether I had other business at the bank there or not, but I think I did, and besides any other business, I wanted to gratify Mrs. Fitch, which I did. I gave her a two-pound box of candy, chocolates.

Q. Did you ever go to the bank there with George Parr?

A. I believe we went to the bank sometimes.

Q. Did you ever see him at the bank there on occasions other than when you went with him originally?

A. Yes.

Q. Aside from giving the money to Parr at his office, did you ever give the money to him at any other place?

A. Yes, I delivered the money one time to him at the bank. I happened to be at the bank on one of those errands and when I got the money in a sealed envelope, I turned around and he was behind me so I just handed the money to him.

Q. Did you ever deliver the money to George Parr at any other place than at the bank or his office?

A. Yes, I believe one of the—in one case, I delivered the money to him at his home.

Mr. Foreman: At his what?

A. At his home. At his house.

Mr. Foreman: Oh, thanks.

Q. (By Mr. Wilkey) When you would go see Mr. Donald in the bank to get this money to take back to Mr. Parr, were you ever present when Mr. Donald made a phone call?

A. Yes.

Q. And do you know to whom the phone call was made?

A. This time that I have reference to, I was near Mr.

Donald when he picked up the telephone and put in a long distance call to Mr. Parr.

Q. All right. What was the subject of that conversation, as much as you can tell from Mr. Donald's end of the conversation?

A. To my best recollection, it was that Mr. Donald told Mr. Parr that I was there with some checks.

Mr. Foreman: May it please the Court, we ask that the prosecution fix the date so as to let us know when, or approximately when this is supposed to have occurred?

The Court: It is so suggested.

Q. (By Mr. Wilkey) Mr. Heras, can you tell us approximately when this first time was that Mr. Donald called Mr. Parr, when it occurred in relation to the time when the practice of cashing these checks began?

A. I would say that it was in the latter part of 1948.

Q. All right, sir. Now, did this—what occurred in this conversation here? You had gotten to the point where he picked up the phone and called Mr. Parr you were there to get some cash. Was there any other part of the conversation that you heard?

A. No, the only thing I remember was that he was calling Mr. Parr and telling him that I was there with some checks and just verifying the amounts or what I had said.

Q. Verifying the amounts, the total of the checks?

A. Yes, sir.

Q. How much did those checks generally come to? Was there anything about the figures from time to time?

A. To my best recollection, those amounts were almost

invariably what we call round figures. I mean three or five or seven or nine thousand dollars.

Q. How about the denomination of the bills you would get? Was there any usual practice about that, or did it vary?

A. Almost invariably I would get $100 bills, except on a few cases I was either told to get $50 bills, or the bank would just give me the amount in $50 batches.

Q. Did you ever give this money to anybody—in these envelope to anybody except Mr. Parr?

A. I believe one time I delivered the money to Mr. Benson.

Q. What caused you to do that?

A. I believe I was leaving town and Mr. Parr was not available when I came back from the bank.

Mr. Foreman: We would like to have this time fixed for the time he gave the money to Mr. Benson.

The Court: It is suggested.

Q. (By Mr. Wilkey) Can you fix the time of this incident, Mr. Heras, in relation to anything else you have testified about here?

A. My best guess is it was in 1949.

Q. Can you say about what part of 1949 or not?

A. No, I don't recall exactly what part of the year it was, but my best recollection is that it was around during the year 1949.

Q. All right, sir. Was this envelope you gave to Mr. Benson sealed or unsealed?

A. It was sealed.

Q. Did you ever give any of this money you obtained

from Mr. Donald at the bank to anybody besides Mr. Parr and Mr. Benson?

A. Yes, I was instructed to deliver the money to Mr. D. C. Chapa in one case.

Q. Who instructed you to deliver it to Mr. D. C. Chapa?

A. Mr. Parr.

Mr. Foreman: May we fix the time and the date it is alleged to have been give to Mr. D. C. Chapa?

Q. (By Mr. Wilkey) Can you state approximately when it was you were to give the money to Mr. D. C. Chapa?

A. I think it was in 1950.

Q. All right. Where did you deliver it to Mr. D. C. Chapa?

A. My best recollection is that I delivered the money at the office in San Diego.

Q. The office of San Diego, whose plan is on the board there?

A. Yes.

Q. Did you ever prepare or write a fictitious check on the Benavides Independent School District on your own initiative?

A. No, sir.

Q. Did you ever receive any of the money that you got from Mr. Donald or the tellers at the bank?

A. No, sir.

Q. Did you ever work for the Texas State Bank of Alice?

A. No, sir.

Q. May I have Exhibit 9 please?

(Tendered to counsel.)

I show you what has been identified as Government's Exhibit 9, and I will ask you here in regard to the first page of the exhibit to scan the names that are on that exhibit there and see first of all if you know any living persons by those names there on that first page?

A. No, sir, I cannot identify any of these names as being the names of existing persons.

Q. Aside from the fact of whether or not they were existing persons, have you ever heard or seen those names here written out before?

A. Yes, sir, I have.

Q. Where did you see those names written out?

A. I saw these names written out on checks on the Benavides Independent School District funds.

Q. All right, sir. Now, then, have you had occasion before to examine Government's Exhibit 9 here, the names on it?

A. I believe so.

Q. Woud you look through there and be sure and see if you know any of the people as living persons who are listed here on Government's Exhibit 9?

Mr. Foreman: Your Honor, the man has already glanced at the first page without looking at any of them and said he did not know any of them.

Mr. Wilkey: I believe that is a misstatement of what the witness did. He looked down the page and delayed his answer until he looked at it.

The Court: I will instruct the witness he should examine the names before he answers.

Mr. Wilkey: Your Honor, I object and except to coun-

sel's comment, which I think is a misstatement of what happened here.

Mr. Foreman: If I did, it will prejudice the defense. The jury saw what happened, and furthermore we suggest asking him, after he has already answered it, asking him to go back in there and examine it as coaching the witness.

Mr. Wilkey: Your Honor, I think counsel for some reason—

The Court: I will instruct the witness to examine the list and answer the question.

Mr. Wilkey: May I explain to the Court—I don't think the Court could see what went on here.

The Court: I want to get along with the testimony.

Q. (By Mr. Wilkey) Will you look through this, Mr. Heras, and see if you know any of these people as living persons?

A. On this page 2 of Exhibit 9, I have examined the list of names.

Mr. Foreman: May it please the Court, we object to the roundabout approach of the witness. He can answer that without making a speech about it. It would shorten it a great deal. We submit, every question asked could be asked directly instead of making a preamble to the answer.

The Court: What do you mean by directly?

Mr. Foreman: I've got down here about fifteen places where he uses 25 or 30 words to make an answer before he gets to his answer. If the Court would follow the witness—I am not criticizing the witness for it except it is time-delaying tactics.

The Court: Yes, the question is if he finds the name of any living persons known to him. I don't know why it is limited to living persons, but it is, and the question could be answered yes or no. If you see the names of any persons know to you, that should be pointed out.

Q. (By Mr. Wilkey) On Page 2, Mr. Heras, do you know any of these persons?

A. No, sir.

Q. On Page 3, do you know any of those persons?

A. No, sir.

Q. Mr. Heras, have you had an opportunity—have you had an opportunity to examine Exhibit 9 before?

A. Yes, sir.

Q. When you examined it before, did you find any person on there known to you as an existing individual?

A. No, sir.

Q. I think we can save time that way, Your Honor. On Exhibit 9 there, in addition to Page 1, do you recognize any names on Exhibit 9 as having seen those names before?

A. Yes, sir.

Q. Under what circumstances did you see those names?

A. Those names were given to me on a piece of paper, written on a piece of paper and handed to me by Mr. Parr for checks to be written out.

Q. Did you prepare those checks?

A. Yes.

Q. Mr. Heras, those checks 17-A through 17-P that I have shown you and presented to the jury, and are now in the possession of Mr. Foreman—may I have them back, please?

Mr. Foreman: Yes, sir.

Q. (By Mr. Wilkey) Where were those checks in—to your knowledge, in late 1953, or late 1952, I mean?

A. They were in my possession.

Q. All right, and how did they get in your possession?

A. I got the checks.

Q. From where?

A. From the school office.

Q. Where did you find them in the school office?

A. They were wrapped up in a brown paper and inside of a concerte vault we have in the office.

Q. And what did you do with the checks?

A. I took those checks with me.

Q. Did you take only those here, or were there more than those?

A. There were checks in that bundle, good bona fide check, and this kind of checks, fictitious checks, and there was other material in that bundle also.

Q. All right. What did you do with the checks, good and bad, made to real and fictitious persons, when you took them from the School District office there?

A. I took those checks to my private office.

Q. Where was your private office at that time?

A. It was located in the Heras Building in Benavides, Texas.

Q. Where did you put them in the office?

A. I had a two-drawer steel file with locks.

Q. Did you put them in there?

A. Yes, sir.

Q. About how long did they stay in there?

A. I believe I had them there for about a couple of months.

Q. And what did you do with them after that?

Mr. Foreman: Pardon me. Miss Reporter, did he say "steel file in his office"?

The Official Reporter: Yes, sir.

Q. (By Mr. Wilkey) What did you do with them after two months or more?

A. I delivered the checks—I don't recall whether it was to an internal revenue agent or a grand jury.

Q. All right, sir. In addition to those checks that you have in your hand there, I will ask you to look at Government's Exhibits 18, 19, 20 and 21, and ask you if you have seen those checks before?

A. Yes, sir, I have.

Q. Where did you see those?

A. I saw those checks when I prepared them.

Q. All right, sir. Who countersigned them?

A. They were countersigned by Mr. G. B. Parr.

Q. When was the—did you see these checks in late 1952?

A. Yes, sir.

Q. Where?

A. In my office.

Q. Were they among the checks with 17-A through P there that you took from the School District office?

A. Yes, sir.

Q. In addition to the checks, did you take anything else from the School District office at the time?

A. Among those canceled checks, statements, there were one or two annual reports of school funds.

Q. Were they the original of the annual reports, or carbon copies?

A. I believe they were carbon copies.

Q. Anything else?

A. I think there was a tax collector's cash book.

Q. What period of time did it cover, if you know?

A. I think it covered all those in about the middle of 1951.

Q. With reference to your office there from which you took those documents, what office—for what purpose was that?

Mr. Foreman: Pardon me. I am confused as to whether he meant for what purpose did he take them to the office, or what purpose did he maintain the office.

Q. For what purpose did you maintain the office?

A. I maintained that office as to—as a public stenographer or different kinds of clerical work.

Q. When did you set up that office there in the Heras Building?

A. I set it up around the latter part of 1952.

Q. Did you ever have an office that had Heras & Heras on the door?

A. Yes.

Q. What was the occasion of your putting Heras & Heras on the door?

A. It was not a partnership. I would say that because

I was the only one making out the reports of clerical work. I decided to style it or put it that way "Heras & Heras" in order just to make the name longer and not have any reason at all other than that.

Q. Who did you discuss this making it Heras & Heras with?

A. I told my first cousin, H. Q. Heras, about that and he also agreed it would be a good thing even though I was the only one in charge of the office and I was, in fact, the only one doing the work.

Q. Did H. Q. Heras have anything to do with the functioning of that office?

A. No, sir.

Q. During what period of time was the so-called firm of Heras & Heras there in the Heras Building in Benavides?

A. It was over a short duration. I would say about three or four months.

Q. Which months were they?

A. They were January, February and March of 1953, I believe about two and a half months.

Q. What did you do after that?

A. I was unemployed for a long while.

Q. Then where did you go to work, or did you go to work?

A. Yes, I went to work with the TEC, the Texas Employment Commission in Austin, Texas.

Q. That was in about what period of time?

A. It was in 1953 from April to July, I believed it was.

Q. 1953?

A. 1953.

Q. Back to your work with the School District office in the Parr Building there in San Diego, did you prepare

tax rolls as part of your duties as deputy tax collector and acting secretary?

A. Yes, sir.

Q. Did you prepare the 1952 tax roll?

A. Yes, sir.

Q. Did you have anything to do with the 1953 tax roll, the preparation of it?

A. No, sir.

Q. Were you working in the School District office there in Benavides at any time during the year 1953?

A. No, sir.

Q. All right, sir. What did Mr. Benson do in the years he was working for the School District there in the office of San Diego?

A. He was a public accountant.

Q. And what did he do?

A. He kept books for several people.

Q. Specifically, Mr. Heras, in regard to the Benavides Independent School District what did he do?

A. He was auditor for the School District, supervised the bookkeeping part of it, and I did the detail work and presented the balanced books to him for trial balance and a recheck, and he was also in charge of preparing the budget of the School District, and also in charge of submitting reports to the State government, the State department.

Q. Was that up until the time he quit work in June of 1950?

A. Yes.

Q. After he quit work in June of 1950, did he maintain his office in the Parr Building still?

A. Yes.

Q. What kind of system of bookkeeping did you have there for the School District?

A. We had what we call a double-entry set of books composed of a book of original entry, a general ledger, an employees compensation ledger, and a payroll record.

Q. Were they on a cash basis or on a liability basis, or on a what?

A. We were on a cash basis.

Q. Now, how long did the books of the School District remain there in the Parr office in San Diego?

A. They were—

Mr. Foreman: May it please the Court, it is inadvertent, but nevertheless it is not in the record those are in Parr's office. The testimony is they were in Benson's public accounting office in the Parr Building at San Diego, and the shorthand inference—

The Court: I will sustain the objection.

Q. (By Mr. Wilkey) I will rephrase that. In the Parr office building in San Diego?

A. They were maintained there many years.

Q. When did they leave there?

A. The books were taken out of there around the middle of July, 1951.

Q. What was the occasion of their being removed?

A. The offices of the School District were moved to Benavides, Texas.

Q. And who decided whether the books should be moved or not?

Mr. Foreman: May it please the Court, if he knows of his own knowledge, I have no objection. He has stated—

The Court: I think it should first be established if he does know.

Q. (By Mr. Wilkey) Did you have any discussion with anyone about moving the books back to Benavides?

A. Yes, sir.

Q. With whom?

A. Mr. George B. Parr.

Q. What was the nature of that conversation?

A. It had been rumored that the offices would be moved to Benavides, Texas, and I asked him about the rumors, and he said he had planned to move the office. I had occasion to discuss this rumor two or three times before they were removed.

Q. By two or three times, you mean when?

A. Before July of 1951.

Q. Were you in favor of the removal, or did you object to it?

A. I was not in favor of it.

Q. And what—who decided that the books and you would move back to Benavides?

A. Mr. Parr.

Q. Did he tell you that?

A. Yes, sir.

Q. And what was done?

A. He told me that he was moving the office to Benavides, and I told Mr. Parr that I didn't exactly object to the removal. I had no authority to stop anything like that, but we had an agreement that I would remain in San Diego if the books were moved to Benavides.

The Court: Gentlemen, it is five o'clock and the jury is reminded of the instructions previously given, and court is adjourned until 9:30 tomorrow morning.

10-2149 MORNING SESSION— JUNE 6, 1957

DIEGO HERAS,

being the witness who was on the stand at the time court recessed on June 5, 1957, resumed the stand and testified further as follows:

10-2149 DIRECT EXAMINATION (CONTINUED)

The Court: Be seated, please. You may proceed.

Q. (By Mr. Wilkey) Mr. Heras, turning your attention to the month of June, 1950, about which you have already testified partially, do you recall a conversation in which Mr. Parr and Mr. William Benson and yourself were present in regard to the signing and countersigning of checks?

A. Yes, it was about the middle and during the month of June, 1950, that Mr. Benson and myself decided to discuss—

Mr. Foreman: May it please the Court, he has answered the question. He says he recalls it. The rest is purely voluntary.

The Court: Yes.

Q. (By Mr. Wilkey) Mr. Heras, now that we have directed your attention to that incident, will you tell us what occurred between you and Mr. Parr and Mr. Benson, or between you and Mr. Parr, or however it took place?

Mr. Foreman: We ask that this be limited to the Defendant George B. Parr, and object to it as being hearsay as to all other defendants.

Mr. Wilkey: We will so offer it, Your Honor.

The Court: Very well. It will be so received.

A. We had a conference with Mr. Parr, and after that Mr. Parr instructed us, those in the office, that the—

Mr. Foreman: Pardon me. We had, and after that—Your Honor, that is bringing in another and different answer than asked about. He was asked about a conversation at a different time. If it is in the same conversation, it is not objectionable.

Mr. Wilkey: I asked what took place there, and I want him to give the whole story.

The Court: I suggest you develop it by further questioning.

Q. (By Mr. Wilkey) You had a conversation between Mr. Parr and Mr. Benson and yourself, is that correct?

A. Yes, sir.

Q. After that conversation, what took place?

Mr. Foreman: Pardon me, I would like for him to fix it as to date, if it was not at the same time, if this is another and different time, so for us to know whether or not another objection is required.

The Court: Very well, sir.

Q. (By Mr. Wilkey) After that conversation, did anything else occur in relation to that on that same date?

A. Yes, sir.

Q. What was that?

A. It was in the afternoon of that day after we had the conversation that Mr. Parr came into our office, the general offce, looking for Mr. Benson and Mr. Benson was not available then, but he directed his attention to Miss McCoy and myself, and told us that from that date on he wanted to countersign all the checks on the Benavides Independent School District.

Q. He gave those instructions to you and Miss McCoy?

A. Yes, sir.

Q. Did he give any further instructions?

A. Yes. As I recall, he also gave instructions for us to have everything ready for him to sign when he came to the office or when we wanted anything signed by him, he wanted everything ready so he could go ahead and sign either checks or reports, or whatever we had to present him.

Mr. Foreman: He wanted the checks or—I missed a word.

A. Or the reports.

Q. (By Mr. Wilkey) Looking on the chart there, in what room was that that this took place?

A. This took place in this room here (indicating).

Q. All right, sir. Did Mr. Parr come into that room occasionally there?

A. Yes.

Q. Occasionally, frequently, or how often?

A. I would say he would come into that office every time he was in the building.

Q. Do you know of your knowledge whether Mr. Parr gave those same instructions to Mr. Benson or not? In other words, did you hear any such instructions given to Mr. Benson?

A. No, I didn't hear anything.

Q. All right. After that date, who countersigned the checks?

A. Mr. Parr.

Q. All right. For the record, the room we are talking about into which Mr. Parr came practically every time he was in the building, is the office up there you have called the general office in the Parr Building, right?

A. The general office, right.

Q. Now, at the time that you were there in San Diego in the Parr building in that general office room, with reference to the mail of the Benavides Independent School District, where was the mail delivered?

A. The—I would pick the mail up at the post office in Benavides and bring it on to San Diego.

Q. At that time, you lived where?

A. I lived in Benavides.

Q. And you brought the mail from the post office to the office in San Diego?

A. Yes, sir.

Q. Who opened the mail?

A. It was either Miss McCoy or Mr. Benson or myself.

Q. What portion of the mail did you open?

A. I—I—some of the correspondence was addressed to my attention and I would open that type of mail.

Q. What about mail addressed generally to the Benavides Independent School District of the Tax Collector of the Benavides Independent School District? Who opened that?

A. It was opened there in the office by either Miss McCoy, or sometimes myself.

Q. How about Mr. Benson?

A. Mr. Benson would occasionally open the mail up too.

Q. I see, and after the mail was opened, what was done with it?

A. It was sorted in numerical order according to the receipt numbers as payments were received. In other cases, the correspondence was mostly in connection with taxes or description of property, and other correspondence consisted of bills against the School District.

Q. All right, sir. Now, then, after June of 1951 when the office of the School District was moved from the Parr Building and back to the office in Benavides, who picked up the mail at the post office then?

A. I don't get that question, Mr. Wilkey. Will you repeat that?

Q. After June, 1951, when the records of the School District and the office set-up was moved back to Benavides, who was it that picked up the mail at the post-office at Benavides?

A. After that date, I had no authority to pick up the mail from the post office.

Mr. Foreman: May it please the Court, he hasn't been asked what authority he had. He was asked who picked up the mail.

Mr. Wilkey: I think the witness is entitled to answer

the question in the way it comes to his mind. He has said in this period up to July he did pick up the mail. Now, I asked him who did pick it up after June. That doesn't necessarily and absolutely call for him to say he didn't pick it up, but that is the logic that comes to a man's mind. He didn't pick it up, and I suggest the witness can answer in the way he thinks.

The Court: I will let the answer contain an explanation if the explanation would be called for in the question. I don't want the answer of the witness to go beyond what is asked by the question. If the answer requires some explanation, that will be permitted. I don't want the witness to volunteer any information not asked for in the question. Is that understood?

A. Yes.

The Court: Very well.

Q. (By Mr. Wilkey) Now, Mr. Heras, will you tell us who picked up the mail there after the office was moved back into Benavides?

A. Yes, sir. It was picked up by two or three different persons.

Q. Who were they?

A. There was Mr. C. L. Oliveira, or Mrs. Velia Oliveira.

Q. All right.

A. Or Mrs. Hilda Chapa.

Q. Hilda Chapa Gonzales?

A. Yes.

Q. Was Velia Oliveira the daughter of C. L. Oliveira?

A. Yes.

Q. Did all three of these employees work in the office there at Benavides

A. Yes.

Q. Did any of them ever work at San Diego?

A. No, sir.

Q. After July 1951, did you have any access to the Benavides Independent School District mail box?

A. No, sir.

Q. Did you ever pick up the mail at the post office and bring it to the office at Benavides?

A. No, sir.

Q. After July, 1951, were you any longer the acting secretary of the school board?

A. No, sir.

Q. After July, 1951, did you ever prepare any more of those fictitious checks and take them to the Texas State Bank at Alice to be cashed?

A. No, sir.

Q. Who prepared the checks after July, 1951, when the office went back to Benavides?

A. They were prepared in the office of the secretary of Mr. Oscar Carrillo.

Q. Who worked for Mr. Scar Carrillo?

A. His secretary was Miss Velia Oliveira.

Q. Is she now Mrs. Bridges?

A. Yes.

Q. Then Velia Oliveira?

A. Yes.

Q. Who handled the tax collection part of the office there in Benavides after it was moved back, after July of 1951?

A. It was handled by the tax collector's office, in the tax collector's office, by Mrs. Hilda Chapa.

Q. She was then Hilda Chapa? Has she subsequently married?

A. I beg your pardon, you are right. She is now Mrs. Hilda Chapa Gonzales.

Q. I just wanted to get the name straight. With whom did Hilda Chapa Gonzales work?

A. She was working under D. C. Chapa.

Q. What were your duties in the tax office there as deputy tax collector after the office was moved back?

A. My duties consisted of preparing renditions of property, processing them and getting them ready for the tax rolls.

Q. All right, sir. Did you prepare the tax rolls—

Mr. Foreman: Pardon me. Would you read that answer back, little lady?

The Official Reporter: Yes. (Reading): "Answer: My duties consisted of preparing renditions of property, processing them and getting them ready for the tax rolls."

Q. (By Mr. Wilkey) Did you prepare the tax rolls for 1951 and 1952?

A. Yes, sir.

Q. Did you handle some of the correspondence with some of the taxpayers in regard to their property evaluations and their payments?

A. Yes, sir. Some of the correspondence in connection with the description of the property, or some other details other than payment of taxes.

Q. Now, will you describe how in the office at Benavides after the records were moved back there in July, 1951, how the incoming mail was handled?

A. After the mail was brought into the office, they would either pile it on top of Mr. Chapa's desk or keep it in Mr. Carrillo's office desk until Mr. Chapa came by to open the mail.

Q. Who was the person who opened the mail there in the office when it went back to Benavides?

A. It was opened by either Hilda Chapa Gonzales or D. C. Chapa, the tax collector.

Q. With reference to this chart of the Benavides office which has previously been used here for reference—I think you can remain in your chair, Mr. Heras—will you look at the office numbered 6 and tell us who operated in that office during the time you were there in the last of 1951 and the year 1952?

A. Mr. D. C. Chapa operated Office No. 6 on this chart.

Q. Was anyone else there with Mr. Chapa?

A. His secretary, Mrs. Hilda Chapa Gonzales.

Q. How many desks were in there?

A. They had two desks.

Q. Going to Office 5, during the year and a half you were there, the last of 1951 and 1952, who operated in Office No. 5?

A. Mr. Oscar Carrillo, Jr.

Q. You mean Jr. or Sr.?

A. Senior. I beg your pardon.

Q. Who else?

A. His secretary, Mrs. Velia Oliveira Bridges.

Q. How many desks were in there?

A. Two.

Q. Where, in reference to that chart, was the mail customarily put and opened?

A. It was sometimes put on Mr. Carrillo's desk and in other cases, it was put on Mr. Chapa's desk.

Q. All right. Who operated in Room 4?

A. That Room 4, we had that there for the purpose

of the clerical work. We maintained three or four, in some cases five employees during the tax roll season, and that was the room we used to make out the tax rolls in.

Q. Where did you work?

A. My place was in that room No. 2.

Q. No. 2, and what did you do there?

A. There is where I prepared the renditions of oil and real estate for the tax rolls, and handled the correspondence in regard to taxation, the assessments.

Q. All right, sir. Now, then, back to the mail and the receipt of the tax payments, how were the—describe the processes of sending out the tax statements and getting the receipts and getting the return of the checks and issuing the receipts. Describe how that was done during the year and a half you were there at Benavides.

A. After the tax roll was made and receipts written, we would mail out the tax notice, which was a carbon copy of the original receipt. We would send out those notices and the taxpayers would remit by check or money order the amount of taxes paid along with the tax notice.

Q. All right, sir. Then, after — how did they remit, through what means?

A. Through the mail.

Q. All right. As far as the amounts of money collected, was there a greater amount paid through the mails, or a greater number dropping in the office to pay personally?

A. I would say 90 per cent of the taxpayers remitted their payments by mail.

Q. After the checks came in in the mail, where were these checks put? How were they handled?

A. Mr. Chapa would open the mail and get the receipts, the notices out, and separate the payment from the correspondence that came in dealing with the other aspects of

the assessment, and then we would arrange the payments in either alphabetical or numerical order to draw out the receipts.

Q. What do you mean by arranging the payments? You mean just arrange the tax statements that were sent back in alphabetical or numerical order?

A. Yes, those tax notices were numbered.

Q. And then for each tax notice that you would send out which was returned, there was the original receipt still in the book; is that correct?

A. Yes, sir.

Q. Then what would be done in regard to the receipts?

A. After the tax notices were arranged in either numerical or alphabetical order, we would go ahead and issue the receipts, write out the receipts as far as date and amount remitted, and the discount, if any, and then we would either sign the receipts with the name of the tax collector by whomever made out the—whoever the deputy was that made out the receipts, but most of the times we would prepare those receipts an denter the date and the amount paid and left the line blank where the tax collector was to sign.

Q. After that had been prepared for signature, what was done with the receipt?

A. We would mark those receipts or indicate the receipts by a slip on either side of the receipts showing where we had a receipt ready for the signature of Mr. D. C. Chapa.

Q. After the receipts were prepared, where would they be placed?

A. They were still in the book until Mr. Chapa signed the receipt. After he signed the receipts, we would tear the receipt out and put them in an envelope and mail them out to the taxpayer.

Q. Where were the receipts kept after having been prepared and while awaiting Mr. Chapa's signature?

A. They were held in the office of the tax collector.

Q. By that, you mean which room?

A. Room 6.

Q. All right. Now, when a deputy signed the receipt, did they or not use a rubber stamp to show D. C. Chapa by so-and-so?

Mr. Foreman: May it please the Court, I have no objection to this man testifying what he did or didn't do, but as to what somebody else did it would be hearsay.

The Court: Not if he observed it.

Mr. Foreman: There were some several deputies. At any given time or any given receipt, I have no objection to, but he is asking what was done generally without fixing the time, place, or referring to the receipt.

Q. (By Mr. Wilkey) Mr. Heras, during the last half of 1951 and the year 1952, in which you were in the office there, what was the general practice of the office staff in regard to the deputy signing the tax receipt? Just exactly how did the deputies sign when they would sign?

A. It was signed D. C. Chapa by the name of the writer, whoever worked out the receipt.

Q. For the D. C. Chapa by what other means, did you have a rubber stamp or write it on?

A. We would write it on the lines specified for the tax collector. We did not have a rubber stamp signature.

Q. At the time you were in the office, you did not have a rubber stamp signature?

A. No.

Q. How often would Mr. Chapa be in the office there?

A. Well, he was there, I would say, every day during the tax season.

Q. What was the tax season?

A. It would begin around the middle of September, through January of the following year.

Q. Did Mr. Chapa ever take any hunting trip during hunting season, late fall or early winter?

A. Yes, sir.

Q. When he was on those hunting trips, what would be the degree of his attendance at the office?

A. Well, he was there regularly. He would take those hunting trips, but I don't believe he was out of the office during any hunting trip more than three or four days in a row.

Q. Where was Mr. Chapa's hunting lease, to your knowledge?

A. To my knowledge, the hunting lease that they maintained most of the time is along the Rio Grande River, Wood County, and that other county above Wood County.

Q. How far is that by road from Benavides, approximately?

A. Well, I say a minimum of about 90 miles.

Q. All right, sir. Now, then, what was the degree of Mr. Oscar Carrillo's presence in the office there?

A. He was there most every day.

Q. All right. In regard to Mr. Oscar Carillo's office, and particularly in regard to the door connecting that office No. 5 with office No. 1, was that door kept locked or unlocked?

A. It was kept locked most of the time.

Q. Was that true during the day when Mr. Carrillo and Velia Oliveira Bridges were in there working?

A. Yes, sir.

Q. What was the customary procedure for you and the rest of the staff during the years, the last half of 1951 and 1952 to entering that room?

A. It was customary to knock on the door before going in.

Q. And was the door always open, or sometimes you transacted business through the closed door?

A. It was sometimes left open, yes, but most of the time the door was closed and sometimes locked.

Q. Now, then, in what room were the checks of the School District prepared?

A. They were prepared in that room No. 5.

Q. All right, sir. To your knowledge, during the last half of 1951 and 1952, did anyone in the office prepare any of those checks except Oscar Carrillo, Sr. and Velia Oliveira Bridges?

A. I don't know of any other person that prepared the checks.

Q. Now, in regard to deposits of funds, getting back to the time that you were in San Diego in 1949, 1950 and the first half of 1951 and let's put it this way: In the year 1949 and the first half of 1950, up until the time Benson quit in June of 1950, how were the deposits of Benavides Independent School District handled?

Mr. Foreman: May it please the Court, there hasn't been any statement that Benson quit, and it is true that he ceased his connection, but we do not admit that his quitting was voluntary, but that he was fired, discharged.

The Court: Well, now, the mention of Benson in your question was to fix the time?

Mr. Wilkey: Yes, Your Honor.

The Court: I suggest you refer to the time and not to Benson unless Benson is material to it. I don't understand that he is.

Mr. Wilkey: That bears on the question, Your Honor, because Benson was, up until June, 1950, the supervisor there of Mr. Heras in the office of San Diego, as testified to yesterday, but I have no—this matter of whether Benson quit or—

The Court: Are you making any issue of whether he quit or was fired?

Mr. Wilkey: Not at this time. Mr. Benson will be here to testify in that regard.

The Court: I suggest you refer to his departure in some other manner so as not to infer he voluntarily left or whether he was fired.

Mr. Wilkey: I think this is immaterial to this question, Your Honor. I wanted to fix the time.

In the year 1949, and the first half of 1950, up until June of '50, what was the process in regard to making a deposit at the Texas State Bank at Alice?

A. We would list the individual payments on the deposit slips for the School District. The name of the taxpayer was

typewritten on the deposit slip and his amount on the righthand side typed also.

Q. Go ahead.

A. The name of the taxpayer was either typed or the name of the bank, in some cases. In some instances, the signature of the taxpayer was not well printed or written. It was either written out in a form that it could not be distinguished, or made out.

Q. Well, in those cases you listed the bank on which the check was drawn?

A. We listed the bank and the number of the check.

Q. In other words, on those deposit slips there in 1949 and the first half of 1950, every individual taxpayer's check received was itemized on the deposit slip itself?

A. Yes, sir.

Q. Now, in the year from June of 1950 until after Mr. Benson ceased his connection with the School District, and while you were operating there in San Diego, was there any change in the method of itemizing the taxpayers' checks on the deposit slips for the Texas State Bank of Alice?

A. No, sir.

Q. The same practice was followed?

A. The same process, the same practice.

Q. After the books were moved back to Benavides in July of 1951, was there any change in that practice, to your knowledge?

A. Yes, I believe there was a change in the method of making out the deposit slips.

Q. What was the method followed after July of 1951 when the books came back to Benavides and Mr. Carrillo became secretary, and you ceased being acting secretary?

A. Mr. Wilkey, I don't believe I—

Q. What was the new method followed after July, 1951?

A. The best I recall is that the payments were added on an adding machine tape, and the total amount written on the face of the deposit slip.

Q. Were the individual checks listed by the name of the taxpayer or the name of the bank on the face of the deposit slips?

A. No, sir, not to my knowledge.

Q. Now, then, while you were at San Diego there, who was it, or if more than one person, who took the deposits to the Texas State Bank of Alice to put them in the bank?

A. I would take the deposits sometimes, and in other cases Mr. Benson or Miss McCoy would take the deposits.

Q. After you went back to Benavides in 1951, who made the deposits at the Texas State Bank, to your knowledge?

A. It was Mr. D. C. Chapa, and I believe that in some cases Miss Hilda Chapa Gonzales made the deposits.

Q. Did you yourself make any deposits at the Texas State Bank for the School District after going back to Benavides in July of 1951?

A. No, sir.

Q. Was the matter of deposits and taxpayers' checks any concern of yours after July of 1951?

Mr. Foreman: That calls for a conclusion, Your Honor.

The Court: Objection sustained. The jury is instructed not to consider the answer.

Q. (By Mr. Wilkey) As part of your duties in the office there after July, 1951, did you have anything to do with making the deposits at the Texas State Bank for the School District?

A. No, sir.

Q. Getting back to the records of the School District, which you testified about yesterday, what was the daily record of payments made? Was there a book in which there was a daily record of payments made?

A. Yes, sir.

Q. What was that book called?

A. It was called the tax collector's cash book.

Q. Did this cash book contain payments by cash and payments by check of the taxpapers or not?

A. Yes, sir.

Q. In what order were the checks and receipts in this cash book?

A. They were entered in numerical order according to the receipt number.

Q. According to the receipt number, would all checks received by the School District be in this book, or would there be only a portion of them?

A. The payments were all entered into the book and it had to be entered in order to balance the book with the tax roll, and that was to the middle of 1951, and after 1951, when the office was moved to Benavides, Texas, I don't know whether or not the book was kept.

Q. Was it part of your duties after July of 1951 to keep any book like that?

A. No, sir.

Q. Now, then, was this book of receipts, both check and cash, was it tied in in any way with the deposits at the bank at the time it was kept in 1949, 1950 and the first half of 1951?

A. Yes, sir.

Q. How was it tied in?

A. We would compare the money that was put in the bank with the number—the amount of credits on the tax roll, and we would see that the amounts didn't vary one cent.

Q. All right, sir. So as I get it, there was a tie-in of three things, the cash receipt book, the deposit slips, and the tax roll?

Mr. Foreman: We suggest the best evidence of whether it balanced or didn't balance would be the book itself, and its absence has not been explained, and I think I can establish it in the possession of this man at the time, or at least last in his possession, if permitted to do so on voir dre and request I so establish it for the purpose of an objection.

Mr. Wilkey: I think that is a matter of cross examination, Your Honor.

The Court: I want to be certain now what the disputed testimony is.

Mr. Foreman: May it please the Court, the dispute is that the witness says that this cash book kept by him at San Diego as long as he was there and keeping the books, and up until July of 1951, tied in to the penny with the bank statements. Now, the bank statements are here, we have the ledger sheets and deposit slips, and if he is telling the truth, it could be established if that cash book is available, and it is our contention the cash book he says he kept, and claims was accurate and authenticated, would be the best evidence rather than a statement that it was.

The Court: I think he can testify he kept his books in balance. He can be tested on cross examination.

Mr. Wilkey: Will you repeat my question?

The Official Reporter (Reading): "Question: All right, sir. So as I get it, there was a tie-in of three things, the cash receipt book, the deposit slips, and the tax roll?"

A. Yes, sir.

Q. Now, then, with reference to the time there in the last of 1951 and the year 1952, in which you were in the office at Benavides, did you ever know of Oscar Carrillo cashing any checks at the City Utilities?

A. Yes, I know of some instances where he either had some checks cashed at City Utilities—

Mr. Foreman: May it please the Court, if he saw it I have no objection to it. If he is going to testify to hearsay—

The Court: I think this question is subject to a yes or no answer.

Q. (By Mr. Wilkey) What is your answer?

A. Yes, sir.

Q. Will you tell us what you know, without any reference to any hearsay or what other people have told you, what you know about Oscar Carrillo, Sr. cashing any checks at the City Utilities, and what was his practice in that regard, if any?

Mr. Foreman: We ask that this testimony be limited

to Mr. Oscar Carrillo. It is hearsay as to the other defendants.

Mr. Wilkey: We offer it on all counts. We offer it on the alleged scheme to defraud—

The Court: I will hear the testimony, and if it should be so limited, I will so instruct the jury.

Q. (By Mr. Wilkey) Go ahead.

A. Yes, I saw Mr. Oscar Carrillo send an employee to the City Utilities office to cash some checks.

Q. All right, sir. Now, was this done once or more than one time?

A. It was done, to my knowledge, more than one time.

Q. All right, sir. How was the cash at the City Utilities kept there? Was it in a safe, or a drawer, or a box, or what?

A. From what I saw, they kept the money, or part of the money, in a drawer and they also had a big safe where, I think, they put the money during the night, but what I saw was that they had the money in a drawer there during the day.

Q. Was that subject to being locked up?

A. I guess so.

Q. Well, do you know whether or not Mr. Oscar Carrillo had access to cash checks there from the cash at the City Utilities by permission of Mr. H. Q. Heras, whether or not Mr. Heras was there?

Mr. Foreman: Wait a minute. May it please the Court, I submit that that question calls for hearsay, calls for a conclusion, that the witness ought to be asked—

The Court: Yes, I suggest the question be rephrased. Objection sustained.

Q. (By Mr .Wilkey) Mr. Heras, do you know of your knowledge of Mr. Carrillo cashing any checks at the City Utilities when Mr. H. Q. Heras wasn't there?

A. Yes, sir.

Q. And how would he go about that?

A. He would either contact the—

Mr. Foreman: May I suggest he fix the time and place?

The Court: It is suggested.

Q. (By Mr. Wilkey) The place is the City Utilities office, Benavides, Texas—

The Court: If it is, I want the witness to state that.

Q. (By Mr. Wilkey) During what period of time did this occur, or what time did this occur, Mr. Heras, to the best of your knowledge?

A. Well, that was, I would say, a common practice all during the years, but I saw those cases more frequently in 1951 and 1952.

Q. All right. Those were the years you were in Benavides there?

A. Yes.

Q. How did Mr.—back to my original question, how did Mr. Carrillo go about cashing those checks if Mr. H. Q. Heras wasn't there?

A. He would either see the clerk in the office there, or he would personally cash the checks themselves.

Mr. Foreman: May it please the Court, I ask permission

to examine this witness to see if he is testifying from what he knows or what he saw himself, or—

The Court: Very well, sir. You may do that.

10-2176 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. Heras, were you at the City Utilities when you saw what you can remember you saw at the City Utilities?

A. I was not working at the City Utilities.

Q. I didn't ask if you were working there. I asked if you were there?

A. Yes, sir.

Q. Then you were present and saw what you are talking about?

A. Yes.

Q. And all you are testifying about is what you saw?

A. Yes, sir.

Mr. Foreman: Go ahead.

10-2177 DIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Wilkey Did Hilda Chapa Gonzales ever work for the City Utilities?

A. Yes, sir.

Q. During what period of time, to your knowledge?

A. She worked there for a number of years, but I think the last year she worked there was 1950 and 1951.

Q. Was it prior to the time she came to work for the School District office in Benavides?

A. Yes, sir.

Q. While you were there in 1949—in both San Diego and Benavides, in 1949 and '50, and the first half of '51 and '52, was there any such thing as a list of taxpayers whose checks might bounce, might not be paid?

A. No, sir.

Q. In regard to the taxpayers of mineral interests or the surface interests, which was the larger portion of your tax collections?

A. It was the mineral payments.

Q. And what type of people were the taxpayers making the mineral payments?

A. They were mostly corporations.

Q. In regard to the local citizens there who owned the surface of the land, how did they make their payments, in cash, checks or just how?

A. Some payments were made in cash. Others were made by check.

Q. In regard to the mineral payments, how were the payments usually made?

A. They were made by check.

Q. Going back to your work at the school board, keeping the minutes of the school board, who attended the school board meetings during the years 1949, 1950 and the first half of 1951?

A. The meetings were attended by sometimes a quorum of the school board. It also included—

Mr. Foreman: May it please the Court, the question is who, not the position that they held and I think he could answer it. He stated how many attended each time. That wasn't asked.

Mr. Wilkey: Your Honor, I think any question is sus-

ceptible to being answered in different ways, depending on the information available to the witness, and this witness is answering the question to the best of his ability.

The Court: What is the question objected to?

Mr. Foreman: The question was who attended the meetings of the school board and he starts around stating the meetings were attended by a quorum of the school board. That isn't the question. It is only to save him the time.

The Court: The question is, who attended. That calls for the identity of the persons, I believe, and I suggest it be so answered.

Q. (By Mr. Wilkey) Which persons attended the meeting of the school board in those years?

A. The school board secretary and the tax collector, and sometimes the superintendent.

Q. Who were the members of the school board?

A. You want the names?

Q. I want the names of persons, Mr. Heras, whether officials, members of the board, or anybody else who attended the school board meetings in 1949, 1950, and the first half of 1951?

A. I will begin with the board members. There was Mr. Octavio Saenz, the president, Mr. Richard Barton, trustee, Mr. Earl Delaney, P. J. Green, and W. C. Kelly. We had two more board members, C. G. Ramirez and J. G. Garza.

Q. All right, sir. Now, then, did you ever see Mr. Parr at any of those meetings?

A. Yes, sir.

Q. What was he doing there?

A. He presided over the meetings when we had special meetings or some big transactions for the board.

Q. You say he presided over the meetings. Was he a member of the board, or had he any official capacity with it?

A. No, sir.

Q. What big transactions or important matters would be discussed when Mr. Parr presided over the meetings?

A. It was bond issues or the purchase of school grounds or, I should say, pay rolls.

Q. Something to do with the monetary affairs of the school board?

A. Yes, sir.

Q. All right. Now, then, did you write up any meetings with Mr. Parr's actions recorded in the minutes?

A. Yes, I did write some minutes with his decisions, even though he did not make any motions or second any motions, but the trustees would make the motions, second the motions, and I would record the proceedings as they made them.

Mr. Foreman: May it please the Court, I am confused by the answer, but at any rate, the minutes would be the best evidence of whatever he wrote up. As I understand, he says he wrote them up but he didn't write them, is the way I got the answer, but at any rate the minutes themselves would be the best evidence, and we ask that they either be produced or accounted for before secondary evidence is gone into.

Mr. Wilkey: Your Honor, I am asking him—

The Court: The question is to his practice in preparing minutes. I don't understand the answer to be what the minutes reflect, but what his practice was in preparing the

minutes, and I will let him testify to that. Objection overruled.

Q. (By Mr. Wilkey) Mr. Heras, in regard to what you did in writing up the minutes, did you include in the minutes any of the remarks or directions given by Mr. Parr in regard to those matters?

A. No, sir.

Q. What was the reason for that?

Mr. Foreman: I object to that, may it please the Court, as calling for a motive of the witness that is not subject to cross examination, and calling for a conclusion.

Mr. Wilkey: I will rephrase it, Your Honor.

The Court: Very well, sir.

Q. (By Mr. Wilkey) Did you omit the name of Mr. Parr in regard to the remarks or directions of Mr. Parr on your own initiative or on the instructions of someone else?

A. On the instructions of someone else.

Q. Who was that?

A. Mr. Chapa.

Q What were you told by Mr. Chapa?

A. He would ask me to eliminate the name of George Parr in the minutes.

Mr. Foreman: We ask that the time and place of this be fixed, Your Honor.

The Court: Very well, sir.

Q. (By Mr. Wilkey) Can you recall when you were first given those instructions by Mr. Chapa?

A. No. It was a general practice. The first time I don't remember, but it was a general practice to just omit his name as making any of the decisions.

Mr. Foreman: May it please the Court, we would like him to fix as to when the general practice started. He said he had the directions in a conversation, and now he is evading the conversation.

The Court: The witness will fix the time as well as he can.

Q. (By Mr. Wilkey) Mr. Heras, can you fix the time as well as you can when Mr. Chapa first gave you those instructions?

A. I don't recall whether it was prior, but I think it was 1950.

Q. All right, sir. In regard to the school board annual reports, did you ever handle the school board annual reports?

A. No, sir.

Q. You didn't prepare those?

A. No, sir.

Q. Did you ever mail the annual report on one or more occasions?

A. Yes, I would either mail them myself or have someone mail it.

Q. Where did you pick up, the Texas State Bank?

A. At the Texas State Bank.

Q. When you would pick up the annual report at the Texas State Bank, what did you do with it before you mailed ie?

A. I would present the report to the school board for their consideration.

Q. Was that at a meeting of the school board?

A. That was done in a regular meeting of the school board.

Q. What would be done by the school board at a regular meeting on the report?

A. I don't know whether they inspected the report of not, but I know that it was executed—it was approved by the board and signed by the president of the board.

Q. All right. Who was the president?

A. Mr. Octavio Saenz.

Q. After it was approved by the board and signed by the president, what was then done with the report?

A. It was then mailed to the State Board of Education at Austin, Texas.

Q. All right, sir. Now, then, what occasioned your leaving your employment there in the School District office in December, 1952?

A. I don't know exactly, but I know that I was told not to go back to the office.

Q. You were told not to go back to the office?

A. Yes.

Q. When did that take place?

A. During the last week of December, 1952.

Q. Who told you that?

A. I was told indirectly, I'll put it that way, by Mr. Octavio Saenz.

Q. How were you told indirectly by Mr. Octavio Saenz? Please describe the conversation you had and what was said in that conversation?

A. I had reasons to believe that I was not wanted at

the office, and I asked Mr. Octavio Saenz to find out for me just what the score was, whether they intended to lay me off, fire me, or do something with me, and I prevailed on him for getting the information.

Q. And what did Mr. Octavio Saenz say when you first talked to him there?

A. Mr. Saenz told me that he would inquire and—

Q. Did you have a subsequent conversation with him?

A. Yes, sir.

Q. And what did he tell you in that subsequent conversation?

A. He told me three or four days later that I was not wanted in the office.

Q. All right, sir. Did he tell you anything else?

A. Yes, he told me he had discussed my job or position with the School District, with the rest of the boys, and Mr. Parr and they had seemed to be—not to like me.

Mr. Foreman: We object to hearsay as to everyone but Octavio Saenz.

The Court: It will be so limited. It will not be considered against any defendant except the defendant Octavio Saenz.

Q. (By Mr. Wilkey) All right, sir. After this second conversation with Mr. Saenz in which he told you he had discussed the matter with the other boys and Mr. Parr, and what was the rest you said there?

A. He told me that the boys, the way he put it, didn't like me and he just told me I could use my best judgment, where I knew that I was going to be fired, and the last day I was there—

Mr. Foreman: Pardon me. Your answer "I was going to be fired"—are you quoting—Mrs. Wagner, read that, please—

A. I am not quoting Mr. Saenz. I am quoting what I know of my own knowledge, the handwriting on the wall, if I might say it, that I was going to be fired.

The Court: Gentlemen, I am going to suggest recess at this time. Court will recess for 20 minutes.

(Short recess.)

Q. (By Mr. Wilkey) Mr. Heras, after Octavio Saenz told you in the last week of December, 1952, to use your own judgment about the work of the School District, and in your own mind you thought you were going to be fired, what did you do?

A. I kept working the last few days until the end of the year, then I quit coming to the office.

Q. All right, sir. Now, then, after the end of December, 1952, did you ever do any work for the School District in the School District office there?

A. No, sir.

Q. Now, did you, after that time, do any work for the School District outside the office?

A. Yes, sir.

Q. During what period of time was that?

A. That was for about two or three months of 1953.

Q. Which months of 1953?

A. They were January and February and March.

Q. Where did you do this work in January, February and March of 1953 for the Benavides Independent School District?

A. It was at my private office in the Heras Building.

Q. What was the nature of this work you were doing for the School District then?

A. It was a, what we call, compiling of all the lots and blocks within the City of Benavides.

Q. All right, sir. Did this compilation of lots and blocks in the City of Benavides have anything to do with the mineral tax rolls of the School District?

A. No, sir.

Q. After March of 1953, did you do any work of any kind or character for the School District anywhere?

A. No, sir.

Q. In regard to those cash amounts which you would get at the Texas State Bank in Alice, for bundles of Benavides Independent School District checks, did you ever give any of the cash to Mr. D. C. Chapa?

A. Yes, sir.

Q. Do you remember any particular occasion when you did that?

A. Yes.

Q. And what occurred on that occasion?

A. I gave the money to Mr. D. C. Chapa. I had been instructed to give the money to him.

Q. Who instructed you?

A. Mr. Parr.

Q. Where did you give the money to Mr. D. C. Chapa?

A. To the best of my recollection, I gave the money to Mr. Chapa in our office in San Diego.

Q. In the San Diego office, when you were still there in San Diego?

A. Yes.

Q. What did Mr. Chapa do with it?

A. He put the money in his brief fold, or in his pocket, and—

Q. Did you have occasion to see Mr. Chapa later on that day?

A. Yes, sir.

Q. Where did you see him?

Mr. Foreman: We would like to have the time fixed.

The Court: Very well.

Q. (By Mr. Wilkey) Can you tell us, Mr. Heras, approximately what year or month this occurred, to the best of your knowledge?

A. It was the latter part of 1950, I would say the last quarter, October, November or December of 1950.

Q. Now, then, where in Benavides did you see Mr. Chapa?

A. I saw Mr. Chapa in Benavides—I don't recall, but I think we drove back together.

Q. In whose car?

A. I don't remember whether it was my car or his car.

Q. All right, and when you got to Benavides, what occurred?

A. We went around town for several purposes, and then we went to a store in Benavides, the Cash Store.

Q. What occurred there?

A. He honked his horn and the storekeeper came out.

Q. And what did Mr. Chapa do, if anything?

A. They talked about several things, but he went around to ask him about some bills.

Mr. Foreman: I would like for him to state who went around to ask who about some bill.

The Court: Yes.

A. Mr. Chapa asked the storekeeper for some bills, accounts.

Q. About whose accounts?

A. About his account.

Q. All right.

A. Mr. D. C. Chapa's account.

Q. What did Mr. Chapa do after the conversation with the storekeeper?

A. The storekeeper went inside the store.

Q. What did Mr. Chapa do? I don't want to get an objection to the answer not being responsive to the question. What did Mr. Chapa do?

A. He paid the bills.

Q. From what funds did he pay the bills?

A. It was from the same batch of money I had given him.

Q. That same day?

A. Yes, sir.

Q. Do you know a Maria Gila Rodriguez?

A. Yes, sir.

Q. Did you ever make out any checks payable to Maria Gila Rodriguez?

A. Yes, sir.

Q. I show you Government's Exhibit 1, the annual report of the fiscal year ending August, 1950, and this entry here dated August 31, 1949, Maria Rodriguez, salary in the amount of $50. Do you recall making out any checks payable to Maria Rodriguez labeled salary in the amount of $50?

A. Yes.

Q. Did Maria Gila Rodriguez do any work for the School District?

A. No, sir.

Q. Did you make those checks to Maria Gila Rodriguez on your own initiative, or did someone tell you?

A. Someone told me to write out the checks.

Q. Who told you?

A. Mr .D. C. Chapa.

Q. Did you do it on one or more than one occasion?

Mr. Foreman: We ask that this testimony be limited to the Defendant D. C. Chapa.

The Court: What says the Government?

Mr. Wilkey: We are asking for acts, in regard to the acts, we offer it as against all defendants on the general conspiracy and on the scheme to defraud, the allegation of payments made for non-existent services.

The Court: Will the testimony include any conversations?

Mr. Wilkey: I think the only conversation has already been gone into, Your Honor.

The Court: Very well, you may continue. Objection overruled.

Mr. Wilkey: We ask that the conversation be limited to D. C. Chapa, but the acts be admissible to all defendants.

The Court: Very well. It will be so received.

Q. (By Mr. Wilkey) Over what period did you make checks payable to Maria Gila Rodriguez?

A. I think it covered a period of about three years.

Q. To whom were the checks payable to Maria Gila Rodriguez given?

A. The checks were delivered to Mr. D. C. Chapa in some cases, and sometimes Mrs. Gila Rodriguez would come by the office and pick it up.

Q. Where does Maria Gila Rodriguez live?

A. She lives in San Diego, Texas.

Q. What classification did you give her on the payroll?

A. She was classified as clerical.

Q. How did you arrive at that classification?

A. I don't remember exactly the circumstances.

Q. Did she ever do any clerical work of any kind?

A. No, sir. No, sir.

Q. Now, then, in addition to the check for Maria Gila Rodriguez—oh, by the way, was the check to Maria Gila Rodriguez continued all the time, or was another check substituted for it?

Mr. Foreman: May it please the Court, I think the last half of that question would call for a conclusion.

The Court: It does.

Mr. Wilkey: Rephrase the question, Your Honor.

Q. (By Mr. Wilkey) Did you, all the time you were making out checks, and making out checks payable to Maria Gila Rodriguez, well, did those checks stop in the time you were there prior to July, 1951?

A. I believe they stopped.

Q. At the time the checks to Maira Gila Rodriguez stopped, did you start making out a check to another person?

A. Yes.

Q. What was that other person?

Mr. Foreman: Your Honor, we object to that as leading and suggestive on the part of the prosecution.

The Court: Objection overruled.

Q. (By Mr. Wilkey) What was that other person's name?

A. It was substituted by the name of Matilde Garza.

Q. Do you know any person by the name of Matilde Garza?

A. No, sir.

Q. To whom did you give the Matilde Garza check?

A. It was delivered—handed to Mr. D. C. Chapa.

Q. In addition to the Maria Gila Rodriguez and later the Matilde Garza checks, dd you give any other checks to Mr. D. C. Chapa?

Mr. Foreman: Your Honor, we would like to have those dates fixed.

Q. (By Mr. Wilkey) During the years 1949, 1950 and the first half of 1951?

A. Yes, sir.

Q. Whose names were—

Mr. Foreman: May we understand that is the time for the others also, the ones to Mrs. Gila Rodriguez?

The Court: He stated that he discontinued his checks to Mrs. Rodriguez in 1951. My notes do not indicate when they started.

Mr. Foreman: He says this was ended in 1951 also, Your Honor. I was trying to get the dates.

The Court: I suggest that the time be established, and if not satisfactorily established, it can be fully developed on cross examination.

Q. (By Mr. Wilkey) Mr. Heras, do you recall the date as to year or month when the Maria Gila Rodriguez checks stopped, and the Matilde Garza checks began? Do you know?

A. No, not exactly, but I think it was the latter part of 1950.

Q. The latter part of 1950?

A. 1950, yes.

Q. At any event, you began making the Matilde Garza checks before you left in 1951?

Mr. Foreman: I object to the leading and suggestive nature of the question.

The Court: Objection sustained.

Q. (By Mr. Wilkey) Mr. Heras, in addition to Maria Gila Rodriguez and Matilde Garza, did you give any other checks to Mr. Chapa during 1949, 1950 and the first half of 1951?

A. Yes, sir.

Q. What were the names or name on some of those checks?

A. Some of those checks were made out to Mrs. Amelia Canales.

Q. Do you know an Amelia Canales?

A. Yes, I do.

Q. And who is she?

A. She is a schoolteacher.

Q. What is her full name?

A. Amelia Canales Barrera.

Q. Does she work for the School District?

A. Yes, sir.

Q. As a schoolteacher?

A. Yes, sir.

Q. Was she herself paid under the name of Amelia Canales or Amelia Canales Barrera?

A. My best recollection is that these checks were always made out to Mrs. A. C. Barrera.

Q. The checks to the woman herself?

A. Yes.

Q. The checks that were given to D. C. Chapa, how were they made out?

A. Mrs. Amelia Canales.

Q. In addition to Amelia Canales, Matilde Garza, and Maria Gila Rodriguez, were there any other checks that were given to D. C. Chapa?

A. Yes, there was another check issued to Mrs. C. G. Carrillo, and then there was another check that was made every month, along with the payroll, for Mr. D. C. Chapa, which was an office expense check.

Q. That was made out to Mr. Chapa personally?

A. Yes, sir.

Q. Where did Mr. Chapa pick up these checks?

A. He would either come by the office and pick the checks up, or the superintendent of schools would come by and pick them up.

Q. Who was the superintendent of schools?

No. 391

Vol. VIII - Pages 2401-2800

TRANSCRIPT OF RECORD

Office Supreme Court U.S.
FILED
JUL 10 1958
JAMES R. BROWNING, Clerk

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

Appellants,

Versus

UNITED STATES OF AMERICA,

Appellee

Appealed from the United States District Court
for the Southern District of Texas

U. S. COURT OF APPEALS
FILED

(Original Record Received JUN 2 1958 19

EDWARD W. WADSWORTH

A. Mr. R. W. Milligan.

Q. Are you familiar with Mr. Milligan's siganutre?

A. Yes, sir.

Q. I show you what has been identified as Government's Exhibit 107, being a check in December of 1953, to Amelia Canales, and ask you if that is Mr. Milligan's signature in the countersignature place?

A. Yes, sir.

Q. Do you recognize the signatures here in the position of maker?

A. Yes, sir.

Q. Who are they?

A. O. Saenz, the president, and O. Carrillo, Sr., the secretary.

Q. I show you what has been identified as Government's Exhibit 108 and ask if you recognize the signature in the countersignature place?

A. Yes, sir.

Q. All right. On this check to Matilde Garza dated December, 1953, who are the signers in the position of maker?

A. O. Saenz and O. Carrillo, Sr.

Q. All right. Thank you. And 109-A, a check to Mrs. C. L. Carrillo, December, 1953, who is the countersignature here?

A. R. W. Milligan.

Q. Thank you. In addition to the checks you have named as being given to Mr. Chapa, were there any other checks given to Mr. Chapa?

A. Yes, sir.

Q. Whch ones were they?

A. I would say they were checks made out to persons who performed some work for the School District.

Q. All right, people who were on the payroll of the district?

A. Yes, sir, and people who were hired off and on for different kinds of work.

Q. Did you ever give any checks to Jesus Garza?

A. Yes, sir.

Q. To whom were these checks made payable?

A. Some of these checks were made out to him, J. F. Garza.

Q. Were they—

A. I beg your pardon, J. G. Garza.

Q. Were there any checks you gave to Mr. Garza that were not payable to J. G. Garza?

A. Yes, sir.

Q. To whom were they made payable?

A. Made payable to one Nita Elda Garza.

Q. Who is Nita Elda Garza?

A. She is the daughter of Mr. Garza.

Q. During what period of time did you give checks made payable to Nita Elda Garza to Jesus Garza?

A. Over a period of two years.

Q. Which years?

A. I believe 1949, 1950 and a portion of 1951.

Mr. Foreman: Will you fix what portion, whether it was the first or the last?

A. It was the first half of the year 1951.

Q. Now, how often did you give those checks to Mr. Jesus Garza for Nita Elda Garza?

A. The checks were made out every month during that period.

Q. Did Nita Elda Garza work for the School District during that period?

A. No, sir.

Q. To your knowledge, where was Nita Elda Garza during that time, during the winter months?

Mr. Foreman: May it please the Court, that calls for a conclusion.

Mr .Wilkey: I will phrase it another way, Your Honor.

The Court: Very well. I think if he does know, it should be established that he knows.

Mr. Foreman: It ought to be established he knows without hearsay, also, Your Honor.

The Court: Yes.

Q. (By Mr. Wilkey) Were you living in Benavides in the years of 1949, 1950 and 1951?

A. Yes, sir.

Q. Was Nita Elda Garza in Benavides during the fall, winter and spring months during those years?

A. No, sir.

Q. What age girl was Nita Elda Garza then?

A. I don't know exactly, but she must have been around 18 or 19 years old.

Q. Did you ever give any checks to Mr. Santiago Garcia?

A. Yes, sir.

Q. And to whom were those made payable?

A. Some of those were made payable to him.

Q. And those that were not made payable to him, to whom were they made payable?

A. Some of those checks were made payable to his daughter.

Q. To his daughter?

A. Yes.

Q. And who is Mr. Santiago Garcia's daughter?

Mr. Foreman: We would like to have him fix this time as to Santiago Garcia.

The Court: Yes, I suggest that be done. You mean the time she was his daughter?

Mr. Foreman: No, sir, the time when he was giving the checks to him.

The Court: The question now is to his daughter. Your objection is that if there is to be testimony about any checks, they fix the time?

Mr. Wilkey: Thank you, Your Honor. May I get the answer to who was his daughter?

A. Maria Elva Garcia.

Q. During what period of time, the year or years, did you give checks payable to Maria Elva Garcia to Mr. Santiago Garcia here?

A. It covered a period of about two and a half years that the check was made every month.

Q. All right, sir, and what years did this cover?

A. It was 1949, 1950, and the first six months of 1951.

Q. All right, sir. Now, what age girl was the girl Maria Elva Garcia during the years 1949, 1950 and 1951?

A. She must have been around 19 or 20 years old.

Q. During the fall, winter and spring of those years you have described, was she in Benavides or not?

A. She was not in Benavides. I saw her every other week end, but of my own knowledge, I know that she was attending school.

Q. All right, sir. Outside of Benavides?

A. Yes, sir.

Q. Did she ever do any work for the Benavides Independent School District?

A. Not that I know of.

Q. During that period of time?

A. No, sir.

Q. Now, was Santiago Garcia on the school board during the years 1949, 1950 and the first half of 1951, to your knowledge?

A. No, sir,

Q. Was any relative of Santiago Garcia on the school board at that time?

A. Yes.

Q. Who was that?

A. C. G. Ramirez.

Q. What relation was he and Mr. Garcia?

A. That was Mr. Garcia's father.

Q. Was Jesus Garza on the school board during 1949, 1950 and the first half of 1951?

A. Yes, sir.

Q. Did you ever give any checks to Mr. Octavio Saenz?

A. Yes, sir.

Q. By the way, in reference to the checks of Mr. Garza, first, how did Mr. Garza get the checks for Nita Elda Garza?

A. Sometimes he would come by the office and pick the check up, or sometimes it was given to the school superintendent.

Q. All right, sir. How about Mr. Garcia? How did he get the check?

A. It was handled in the same way.

Q. In regard to Mr. Octavio Saenz, where did he get his check or checks?

A. It was handled almost in the same way. I would either deliver the check to him sometimes, or sometimes I would give the check to either Mr. Chapa or the school superintendent, and he in turn would give them to him.

Q. I show you what has been identified here as Government's Exhibit 110-A and being a photostat of a check to M. I. Saenz dated 26th of May, 1949, and ask you if you recognize any signatures on that check?

A. Yes, sir.

Q. Whose signatures are they?

A. They are signed by me as acting secretary, and countersigned by Mr. W. N. Benson.

Q. Who prepared that check?

A. I did.

Q. To whom was the check for M. I. Saenz given?

A. It was given to Mr Octavio Saenz.

Q. All right, sir. Now, in relation to Exhibit 110-B payable to Mr. Octavio Saenz, dated June something, 1949, I will ask you if you prepared that check?

A. Yes, sir.

Q. Is that your signature?

A. That is my signature.

Q. I won't ask you about all of these individually, but here is one, 110-D, to M. I. Saenz in June, 20, June, 1949. Who prepared that check?

A. I did.

Q. And to whom was the check given?

A. Given to Mr. Octavio Saenz.

Q. All right. Do you know an M. I. Saenz?

A. No, sir.

Q. Another check to M. I. Saenz, 110-F, 28, July, 1949, who prepared that check?

A. I did.

Q. And to whom was it given?

A. Mr. Octavio Saenz.

Q. Another check to M. I. Saenz, dated 31 August, 1949, 110-H. Who prepared that check?

A. I did.

Q. To whom was it given?

A. Mr. Saenz.

Q. 110-J to M. I. Saenz, September 30, 1949, who prepared that check?

A. I did.

Q. To whom was it given?

A. Mr. Saenz.

Q. M. I. Saenz, October 31, 1949, 110-M. Who prepared that check?

A. I did.

Q. To whom was it given?

A. Mr. Saenz.

Q. Now, the ones I didn't ask you about in here are made payable to whom? Were you through here?

A. I don't see any checks there that were not handed to him.

Q. All right, sir. To whom were the other checks made payable?

A. Octavio Saenz.

Q. Given to Mr. Saenz also?

A. Yes, sir.

Q. All right. I will ask you to run through these checks here beginning with 110-M and concluding with 110-TT,

and ask you collectively about them all. Who prepared the checks and to whom they were given?

A. I prepared those checks.

Q. And to who were they given?

A. They were given to Mr. Octavio Saenz.

Q. All right. Does that include both the Octavio Saenz and the M. I. Saenz checks?

A. Yes, sir.

Q. Now, then, I will ask—I will ask you what is the last date here on this last check, being Exhibit 110-TT?

A. It is dated June 15, 1951.

Q. I will ask you to look through those checks, being a check to Francisco Sanchez, dated July 31, 1951, a check to Octavio Saenz, dated August 31, 1951, a check to E. M. Saenz, dated August 31, 1951, a check to M. I. Saenz dated November 30, 1951, a check to A. R. Saenz dated January 31, 1952, a check to some Saenz I can't make out the initials of, dated February 29, 1952—

Mr Foreman: May it please the Court, again the prosecuting attorney is passing checks to the jury for the second or third time. They have already been passed when offered, and identified. We object to that as improper practice.

The Court: What says the Government?

Mr. Wilkey: Your Honor, Mr. Hayes testified some almost three weeks ago, and I think the jury is entitled to see the evidence admitted to refresh their recollection of what it is and what it pertains to after hearing the witness testify about the same thing.

The Court: If it is considered in connection with the

testimony of this witness, I believe it is proper and will be allowed.

Q. And this last check to R. E. Saenz, dated November 30, 1952, in regard to those checks I will ask you if those checks from July '51 to November '52—I will ask you to look at those and tell me if you prepared any of those checks?

A. No, sir, I did not.

Q. Do you recognize the signatures on those checks?

A. Yes, sir.

Q. Whose signatures are they?

A. O. Saenz and O. Carrillo, Sr.

Q. Whose countersignature?

A. G. B. Parr.

Q. Is that true of all the checks?

A. Yes, sir.

Q. Now, then, do you know an E. M. Saenz?

A. No, sir.

Q. Do you know an M. E. Saenz?

A. No, sir.

Q. Do you know an A. R. Saenz?

A. No, sir.

Q. An R. E. Saenz?

A. No, I do not.

Q. In regard to the checks to M. I. Saenz, in that first group there, did you make up the checks to M. I. Saenz on your own initiative, or did someone instruct you to do that?

A. I was instructed to make out the check in that case for that amount.

Q. By whom?

A. I was directed by Mr. D. C. Chapa.

Q. All right, sir. Now, in regard to the checks to Nita Elda Garza, did you make up the checks to Nita Elda Garza on your own initiative, or were you instructed to do that?

A. I was instructed to do that.

Q. Who told you to do that?

A. Mr. Chapa and Mr. J. G. Garza.

Q. In regard to the check to Miss Garcia, did you make up those checks to the daughter of Santiago Garcia on your own initiative, or were you instructed to do so?

A. I was instructed to do so.

Q. Who told you to do that?

A. Mr. Chapa and Mr. Garcia.

Q. Now, I will ask you if you ever gave any checks to Mr. Jesus Oliveira?

Mr. Foreman: I would like him to fix that time of Santiago Garcia's not having any connection with the school board to the time Mr. Santiago Garcia told him to do anything with reference to these checks.

Q. (By Mr. Wilkey) Can you tell me when you were told or instructed by Mr. Chapa and Mr. Garcia with reference to the checks made payable to Miss Garcia?

A. I believe it was in the year 1949 or 1950 that I was instructed by Mr. Garcia's father, who was then trustee of the school board, and Mr. Chapa.

Mr. Foreman: We ask that the Jury be instructed not to consider the answer by the witness that he was instructed by Santiago Garcia to make out those checks.

The Court: What says the Government?

Mr. Wilkey: I want to ask him a question to see what his best recollection as to which person it was who actually instructed him.

Mr. Foreman: I would like the ruling be made on the state of the record at this time, at the time requested, and if he wants to approach it later, he can.

The Court: Again give me your motion.

Mr. Foreman: My motion is that when he formerly testified that Santiago Garcia told him, when asked to fix the time, he says C. G. Ramirez, another and different person told him, and we ask that the Court instruct the jury not to consider the first answer of the witness that Santiago Garcia was the one who told him to give out those checks.

The Court: The jury is so instructed. The jury is instructed to disregard the testimony that Santiago Garcia instructed him to make out the checks to Maria Elva Garcia.

Q. (By Mr. Wilkey) In regard to the checks by Maria Elva Garcia, was it C. G. Ramirez and Mr. Chapa or Santiago Garcia and Mr. Chapa there at one time, or all three of them instructed you?

Mr. Foreman: I object to that as duplicitous.

The Court: Objection overruled.

Q. (By Mr. Wilkey) You may answer.

A. I was directed by Mr. D. C. Chapa and Mr. C. G. Ramirez, and may I add a little?

Q. Yes.

A. Mr. C. G. Ramirez is Mr. Garcia's father.

Mr. Foreman: May it please the Court, nobody asked that. It was thrown in merely to prejudice and argue the case. It is not responsive.

The Court: It was volunteered and it is already in evidence that Mr. Ramirez is the father of Mr. Garcia, and the jury is instructed not to consider the volunteered answer of the witness to that effect.

Q. (By Mr. Wilkey) In regard to Mr. Jeus Oliveira, did you ever make out any checks payable to Jesus Oliveira?

A. Yes, sir.

Q. Over what period of time did you make out checks payable to Jesus Oliveira?

A. I think it covered a period of about two or three years.

Q. What period of time is that?

A. I think 1949, 1950 and a portion of 1951.

Q. All right.

A. The first half of 1951.

Q. During the second half of 1951, did you make out any checks of the School District payable to anyone?

A. No, sir.

Q. I show you this exhibit here, Government's Exhibit 111, and ask you if you have seen the original of that photostat before?

A. Yes, sir.

Q. And who prepared that check?

A. I did.

Q. You signed it as maker?

A. I did.

Q. And who countersigned it?

A. W. M. Benson.

Q. All right. Do you know to whom that check was given?

A. It was given to Mr. Jesus Oliveira.

Q. Did Mr. Jesus Oliveira perform any services for the school board?

A. No, sir.

Q. That check was marked salary. What was his connection with the school board, if any? Did he have any connection with it?

A. Not that I know of.

Q. Did you make that check out in 1949, those checks in 1949, 1950 and the first half of 1951, to Mr. Jesus Oliveira, on your own initiative, or were you instructed?

A. I was instructed.

Q. Who told you to do that?

A. Mr. Parr.

Q. Who was the nightwatchman for the Benavides school?

A. He was Simon Elizondo.

Q. In the years 1949, 1950, the first half of 1951, was that true?

A. Yes, sir.

Q. Was there any other nightwatchman in Benavides for the school?

A. No, sir.

Q. Was Simon Elizondo on the regular payroll of the School District?

A. Yes, sir.

Q. How much a month did Simon Elizondo get for performing the nightwatchman's duties?

A. It was between a hundred and $125.

Q. How much did Mr. Jesus Oliveira get on the payments that wetre made to him for salary?

A. $100.

Q. Was he paid at the same time there as Mr. Simon Elizondo?

A. Yes, sir.

Q. Did you ever hear of Mr. Jesus Oliveira doing any nightwatching for the school?

A. No, sir.

Q. Mr. Heras, what was the process in regard to the preparation of the checks for the countersignature of Mr. G. B. Parr?

A. I would copy the previous month's payroll and copy every name and amount, and any new names that he — that would be given to me.

Q. And then after you had copied that, what next did you do?

A. I would then make out the checks.

Q. All right, sir. And after you made out the checks what did you do?

A. I would present them for signature.

Q. All right, and did you sign them first, or Mr. Parr sign them first?

A. I would sign them first.

Q. I show you Government's Exhibit 110-JJ here, and ask you—which does not bear your signature, which does bear Mr. Parr's signature, and ask you if you konw how that occurred?

A. No, I do not know.

Q. Was that the customary way of doing things, or is that an exception to the normal practice?

A. This is an exception to the normal practice.

Mr. Forman: Will you pass that to the jury?

Mr. Wilkey: It has already been passed to the jury and I want to again.

Was that check to some Saenz, do you know to whom that check was given?

A. No, I do not know.

Q. Do you know a Mr. B. G. Green Moffett?

A. Yes, sir.

Q. Was he ever paid by the Benavides Independent School District during the time you were there?

A. Yes, sir.

Q. How much was he paid?

A. He was paid $500 per month.

Q. $500 a month. What did he do for the school board, if anything?

A. I don't know of anything he did for the school board.

Q. What is his relation to Mr. George B. Parr?

A. He is Mr. Parr's brother-in-law.

Q. Did you ever have any discussion with Mr. George B. Parr about paying or not paying Mr. Moffett the $500 a month?

Mr. Foreman: I would like to have this time fixed, may it please the Court.

The Court: It is suggested.

Q. (By Mr. Wilkey) If you will give us the answer

to this question, and then I will ask you another one about the time. Did you ever have any discussion with him about paying or not paying Mr .Moffett?

A. Yes, sir.

Q. About when was that discussion?

A. I believe it was in 1948 or 1949.

Q. And what was the conversation with Mr. Parr in regard to the payment or non-payment of the $500 a month to Mr. Moffett?

A. He told me to discontinue the name of Green Moffett on the payroll.

Q. Did he give you any reason why?

A. No, sir, he did not.

Q. On any later occasion, was Mr. Moffett ever paid by the School District?

A. Yes, sir.

Q. And did you put him back on the payroll on your own initiative, or were you instructed to do so?

A. I was instructed to do so.

Q. And who instructed you to do so?

A. Mr. Parr.

Q. Mr. Heras, did you prepare the '52 tax rolls of the School District?

A. Yes, sir.

Q. Will you take a look at Exhibit 35 here, sir, and see if you can identify it?

A. Yes, sir.

Q. All right, sir. What is it?

A. It is the tax roll for the year 1952.

Q. Did you prepare that roll?

A. Yes, sir.

Q. For the year 1952?

A. Yes, sir.

Q. Now, then, how did you go about preparing the tax

roll, that is, from what source did you type the names in there?

A. I used the renditions to make the tax roll.

Q. What are those renditions?

A. They are, say, a document or deed or piece of paper describing the property owned by the taxpayer.

Q. And where did you get those renditions?

A. Those renditions were made by the taxpayers in some instances, and in others I made the rendition myself.

Q. The rendered property were rendition sheets prepared by the taxpayer?

A. Yes.

Q. And the unrendered?

A. Were made out in the tax assessing office.

Q. Now, those renditions sheets, were they arranged in any order when you typed the roll from them?

A. Yes, sir. All of the signed renditions were kept in one file, and the unsigned, which is the unrendered, was kept in another file.

Q. Were they arranged in any particular order?

A. They were arranged in alphabetical order.

Q. The rendered property is what portion of the tax roll of 1952?

A. I would say safely about 80 per cent.

Q. Is the roll A, B, C, or D?

A. The rendered oil is Roll C.

Q. And the unrendered oil?

A. Roll D.

Q. Would you take a look in the tax rolls? You may have to look in the rendered and unrendered oil. Take a look for Texas Consolidated Oils and see if you can find it. I suggest you look in the rendered section first.

A. Yes, sir.

Q. Where did you find that?

A. It is on Roll C, Page 70, Line 2.

Q. All right, sir. Is that Texas Consolidated Oils listed there in the regular alphabetical order or not?

A. Yes, it is.

Q. Now, will you look at Sid Katz, K-a-t-z, or Sid and Meyer Katz, however it is listed?

A. Yes, sir.

Q. How is it listed?

A. It is on Page 40 or Roll C.

Q. Which Katz is it?

A. Sid Katz.

Q. Sid Katz?

A. Yes.

Q. Would you look for P. W. Pitzer?

A. There is a Pitzer & Sons.

Q. Pitzer & Sons?

A. Yes, sir, and a Pitzer & West.

Q. Pitzer and Sons and Pitzer & West. Are they in regular alphabetical order in the tax roll?

A. Yes, sir.

Q. Will you look for the Gasoline Production Corporation?

A. Yes, sir. It is on Page 25 of Roll C.

Q. Is it in regular alphabetical order, or not?

A. Yes, sir, it is.

Q. Will you look for Gilcrease Oil Company?

A. Yes, sir. It is on Page 25, Roll C, and line 22.

Q. Is it in regular alphabetical order?

A. Yes, sir.

Q. Will you look for Hagist Ranch, and I suggest you may find that in Roll D, being the unrendered property?

A. Yes, sir.

Q. And where is that found?

A. It is found on Page 40 of Roll D.

Q. And how may different pieces of property are listed for the Hagist Ranch?

A. Three.

Q. All right, sir.

A. Four, I beg your pardon. Four different items.

Q. Four different items for the Hagist Ranch?

A. Yes, sir.

Q. I believe that will be all with the tax rolls, Mr. Heras.

By the way, did you have anything to do with the preparation of the 1953 tax rolls?

A. No, sir.

The Court: Are you going into a new phase now?

Mr. Wilkey: Yes. It is not related directly to what we have just gone into.

The Court: Will it take long?

Mr. Wilkey: No, I think we can do this briefly.

The Court: Very well, sir.

Q. (By Mr. Wilkey) I show you what has been identified as Government's Exhibit 148, and I ask you what that is?

A. It is a letter written by me.

Q. To Whom?

A. C. W. Hall Company.

Q. And dated what?

A. Dated December 3, 1952.

Q. And without reading the letter or without reading it out loud, what is it in regard to?

A. It is in regard to an assessment.

Q. A tax assessment?

A. A tax assessment, yes.

Q. Now, then, how was this letter transmitted to the C. W. Hall Company?

A. It was transmitted by mail.

Q. I note there on the letter it says "Enclosure: Tax Notice." Was a tax notice enclosed with that letter?

A. Yes, sir.

Q. I show you Government's Exhibit 149 and ask you what that is?

Q. I show you Government's Exhibit 149 and ask you what that is?

A. This is also a letter written by me to the Humble Oil & Refining Company.

Q. Dated what, sir?

A. Dated September 26, 1952.

Q. And without reading the exact words of the letter, what does it concern?

A. Tax assessments.

Q. Now, then, how was this letter transmitted to the Humble Oil & Refining Company?

A. By mail.

Q. Where did you mail this letter, Government's Exhibit 149?

A. From Benavides, Texas.

Q. Where did you mail this letter Exhibit 148?

A. From the same place.

Q. The post office in Benavides?

A. Yes.

Q. To what city?

A. To the City of Houston, Texas.

Q. Houston, Texas?

A. Yes, sir.

Mr. Wilkey: We offer in evidence Government's Exhibits 148 and 149.

Mr. Sharpe: If the Court please, we object to each of these exhibits for the reason that the indictment counts are framed either in terms of a letter being taken or caused to be taken to the post office in Houston, Texas, and caused to be deposited, and not in terms of mailing at Benavides, which is the Corpus Christi Division of this District Court.

The Court: Are the letters alleged to have been caused to be taken from the mails at Houston, Texas?

Mr. Sharpe: Yes, sir.

The Court: The letters?

Mr. Sharpe: Yes.

The Court: Well, I think progressively we will have to establish first they were placed in the mail, so those will be admitted in connection with the testimony of this witness that he did place them in the mails.

Mr. Sharpe: Your Honor, I have another portion of the objection here.

The Court: Very well, sir.

Mr. Sharpe: And that is regardless of any placing by this man in the Corpus Christi Division of this District, there would be a various variance of the count because the allegation is a taking from the mails in the Houston

Division of this Court, and before this would be admissible for all purposes—

The Court: I think I understand it, and as of now there is no proof they were taken from the mails. They will be admitted on the testimony of this witness that he did place them in the mails. The evidence has not shown yet that they were taken from the mails.

Mr. Wilkey: The position of the Government is before we can take it from, we must show a placing there.

The Court: Yes. Government's Exhibit 148 and 149 are admitted in evidence. It is now twelve o'clock. The jury is instructed—is reminded of the instructions previously given, and court is recessed until 1:45.

10-2225 AFTERNOON SESSION—
JUNE 6, 1957

The Court: Be seated, please.

10-2225 DIEGO HERAS,

being the witness who was on the stand at the time Court recessed for lunch on June 6, 1957, resumed the stand at this time and continued his testimony as follows:

10-2225 DIRECT EXAMINATION
(CONTINUED)

Q. (By Mr. Wilkey) Mr. Heras, did you ever have a conversation with Mr. D. C. Chapa in regard to bonding

the tax collector and the deputy tax collectors in the Benavides Independent School District office?

A. Yes, sir.

Q. About when did you have that conversation with him?

A. It was in the latter part of 1951.

Q. After the office was moved back to Benavides?

A. Yes, sir.

Q. What was the subject of that first conversation with Mr. Chapa?

A. Mr. Chapa wanted to put some of the tax collector's employees under bond.

Q. What did he say?

A. He asked me to—

Mr. Foreman: We ask that this conversation be limited to D. C. Chapa, and object to it as to all other defendants as hearsay.

Mr. Wilkey: We so offer it.

The Court: It will be so limited, and the jury is so instructed.

Q. (By Mr. Wilkey) What did he instruct you to do?

A. To see how to go about getting bonds for the deputy tax collectors.

Q. All right. Did you do that?

A. Yes, sir.

Mr. Foreman: Pardon me, I know you fixed the time. I think it is 1951, is that correct?

Mr. Wilkey: The last half of 1951.

A. 1951, yes, sir.

Q. Without detailing any conversation, did you talk with any insurance agent in that regard?

A. Yes, sir.

Q. And what next did you do?

A. I reported to Mr. Chapa what would have to be done in connection with the bonding.

Q. Give us the details, if you will, of the second conversation with Mr. Chapa in regard to bonding, what you told him he told you?

A. I told him that—what the amount of the premiums would be and what other access the company would have on the books, the cash books.

Q. I didn't get a word. Access?

A. Yes, to the tax collecting part of the School District.

Q. What is this access the company would have to the tax collecting part of the School District?

A. The bonding company was supposed to check the tax rolls and tax collections in going about making their report.

Q. In making their report in connection with the bonding?

A. Yes, sir.

Q. Did you tell Mr. Chapa that?

A. Yes, sir.

Q. What did Mr. Chapa say?

A. Mr. Chapa said it was a very complicated process and therefore he was not interested any more in having the employees bonded.

Q. Did he say anything else?

A. Yes, he objected to have anyone looking the books over.

Q. What did he say in that regard?

A. He said if any outside other than the employees had to look over the books, he was not in favor of it, therefore he didn't want the employees bonded.

Mr. Wilkey: Your Honor, this concludes the Government's direct examination of Mr. Heras here, and now I think that we should take up those matters raised by Mr. Foreman's motion, some of the legal questions involved, raised by his motions yesterday, therefore I suggest the jury be excused.

The Court: Very well. The jury will be withdrawn.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Resuming our discussion, where we left off yesterday, the witness Diego Heras has testified. What is it that is requested at this time?

Mr. Foreman: We ask for all statements whether signed or unsigned, made by this witness, and all reports of such interviews made by Government representatives, or whether made—such reports were made by Government representatives, furnished to the District Attorney or any other official of the State of Texas, including the grand jury reports.

The Court: Mr. Foreman, I wouldn't know how to get them from officials of the State of Texas. The State of Texas is not involved in this trial in any way.

Mr. Foreman: Your Honor, I have reference to those statements that Mr. Wilkey states were grand jury testimony of this witness furnished him, he says he thinks.

The Court: Oh, you mean minutes furnished to the United States Attorney by the State of Texas?

Mr. Foreman: Only that, yes, Your Honor. I don't think we have a right to order the State of Texas to do anything.

The Court: Immediately I thought of going to all the 254 counties of Texas.

Mr. Foreman: No, sir. Mr. Wilkey, I asked him yesterday if he had the grand jury testimony of this man, of the State grand jury, and explained he had testimony furnished to what they thought was a grand jury, at the time furnished, but to his best judgment he thinks or believes it was furnished to him after it was ascertained it was not.

The Court: Whether it was before or after, does that have anything to do with your request?

Mr. Foreman: No, sir. We want that that was furnished to him for the purpose of this case, and it was this man's testimony, and the two, three or four statements that the witness testified about making, one at Corpus Christi, one made in Austin, Texas in May or June of 1953, and another made in the Alice Hotel at Alice, Texas.

The Court: I think Government's counsel should pay

attention, otherwise you will not know what has been requested.

Mr. Wilkey: Yes, sir.

Mr. Foreman: We are only mentioning those specifically because the witness testified about them. We do not exclude any other such as he may have in his files and about which we have not been advised, if there be any.

The Court: Are you excluding anything, Mr. Foreman?

Mr. Foreman: Not intentionally.

The Court: If so, I would like to know what the exclusion is.

Mr. Foreman: We are making the request severally as sa well as collectively, Your Honor, and if there is anything that we might not, as a matter of law, be entitled to request, we make this as sort of a savings clause.

The Court: Sort of a savings clause?

Mr. Foreman: Yes, sir. We make that request for the purpose of our injecting them and using them possibly on cross examination.

The Court: Government counsel has heard what is requested. What says counsel for the Government?

Mr. Wilkey: Your Honor, we would like to have a

discussion with co-counsel here in regard to this. This is somewhat slightly different from what it was yesterday.

Mr. Foreman: Whichever one is the most farreaching, I want him to consider.

The Court: I am considering the request now because I announced yesterday my action would be deferred until now.

Mr. Foreman: Incidentally, while they are conferring, Your Honor, we want to move this prosecution be dismissed for their failure to—first we requested it last November, sometime in the middle of 1956, in writing.

The Court: I will overrule that motion. The trial is still open, and it is the intention of this Court to have furnished anything that properly should be furnished, so up to this point there is not a failure to furnish anything because the trial is still in progress.

Mr. Foreman: We are directing this at the time furnished, and we want to make the same motion aimed at the time it was made yesterday, as there is a question in my mind as to the time element of the decision.

The Court: That is overruled.

Mr. Wilkey: All right, Your Honor. We furnish the—should those be numbered with an exhibit number?

The Court: I think they should, and I think they should be identified by number and by their identifying number, they should be identified with such description so that the record will reflect what it is.

Mr. Wilkey: Do you want that number to be Government, defendant, or Court?

The Court: Well, the Court has no interest in this trial other than to conduct it impartially.

Mr. Wilkey: We will label them Government then.

The Court: I am trying to think—about how many will there be?

Mr. Wilkey: I would say roughly ten, Your Honor. Could you give them exhibits of A, B, C and D?

The Court: There is some question in my mind whether they should be identified as exhibits, maybe Government Tenders Nos. 1, 2 and 3. I think the explanation is in the record what is meant by Government Tender 1, 2, 3 and so forth, and I want the United States to tender them after they are identified by number, to tender them and have read into the record a sufficient description of each.

(Documents tendered to the Clerk and marked Government Tenders 1 through 8.)

Mr. Wilkey: All right, Your Honor. We tender Government's Tender No. 1, being an affidavit executed the 18th of March, 1953, by Diego Heras to some official of the State of Texas. I don't know which one.

The Court: That is sufficient identification.

Mr. Wilkey: Before the notary Donato Serna.

Government's Tender No. 2, being an affidavit of Diego Heras executed 30 April, 1953, to some official of the State of Texas, before the notary public Doris Bingham of Travis County.

Government's Tender No. 3, being the sworn statement of Mr. Diego Heras taken December 11, 1953, and it was in the post office building at San Antonio, Texas, before Special Agent Edgar W. Henley, this being in question and answer and being as an attachment thereto just as it rests in our files, a carbon copy of the affidavit of 10 March, 1953, previously tendered as Government's Tender No. 1.

Government Tender No. 5 is a—

The Court: You skipped No. 4, didn't you?

Mr. Wilkey: Government Tender No. 4 is a signed statement by Diego Heras dated February 9, 1954, at Alice, Texas, before Post Office Inspectors W. D. Main and Roy H. Cauley, and attached thereto and a part of Government Tender No. 4 is a statement dated February 8, 1954, likewise at Alice, Texas, before Post Office Inspectors W. D. Main and Roy Cauley.

Government Tender No. 5 is a memorandum of interview with Diego Heras in the Alice Hotel, February 8 and 9, 1954, prepared by W. D. Main and Roy H. Cauley, post office inspectors.

Government Tender No. 6 is a memorandum of interview with Diego Heras in the cashier's office, Merchant's Exchange Bank, Benavides, 15, February, 1954, before Roy H. Cauley and W. D. Main, post office inspectors. This memorandum of interview bears the typed name of the inspectors. It is not signed.

Government Tender No. 7 is an affidavit executed 9 April, 1954, at Benavides, Texas, before W. H. Niendorf, Special Agent, and being attached thereto as a part of Government Tender No. 7—

The Court: Is that Mr. Heras' affidavit?

Mr. Wilkey: Yes, Your Honor.

The Court: Very well.

Mr. Wilkey: A handwritten affidavit of Diego Heras signed by him before W. H. Niendorf, Special Agent, 21 April, 1954, at Benavides, Texas, and further bearing the attachment of a typewritten copy of Government Tender No. 7, the first part of it I have already described, and bearing the further attachment of a carbon copy of the affidavit of Diego Heras, 8 February, 1954, before Roy H. Cauley and W. D. Main, post office inspectors, previously identified as Government's Tender No. 4.

Government Tender No. 8 is an unsigned, undated carbon copy of a purported statement of Diego Heras before one David M. Clore, whose position does not appear in the instrument, but who is an agent of the Internal Revenue Bureau. The date is the blank day of May, 1954.

Now, then, in regard—

The Court: I don't believe I got what six is. Is it an affidavit?

Mr. Wilkey: Six is a memorandum of interview with Diego Heras 15 February, 1954.

The Court: Very well. That is sufficient.

Mr. Wilkey: By Cauley and Main, uncited.

The Court: Yes, sir.

Will the record show that the Government Tenders Nos. 1 through 8 have been tendered to defense counsel?

Mr. Wilkey: Now, then, Your Honor, we have also here the questions and answers before the men in Duval County then thought to constitute a grand jury, later determined by the Courts of Texas not to constitute a grand jury, those furnished us by the State of Texas, which have been referred to by Mr. Foreman. We have here also a question and answer between the District Attorney of the 79th Judicial District and the witness, Diego Heras, which purports to be a transcript of some questions and answers made at a date in May, May 31, 1956.

It is our position that the Jencks case does not call for the tender of documents of this nature to the defense. They were not made to any agent of the Government connected to the prosecution of this indictment, have not been referred to in questioning, and merely have been furnished to our office by the State for whatever information they contain, and that their being part of a State process, they do not bear and relate to this Federal prosecution. We have them here. We think the Jencks case does not include these.

The Court: Before we proceed, I think they should be identified similarly. I want them identified as Government Tenders 9 and 10, however I want to state that they have not as yet been tendered to defense counsel, and that

matter is now under consideration by the Court, but I want them so identified.

(Documents tendered to the Clerk and marked Government Tenders Nos. 9 and 10.)

Mr. Wilkey: Your Honor, they have been identified.

The Court: I would like to see them, if you please?

I will now hear defense counsel on Government Tenders 9 and 10.

Mr. Foreman: May it please the Court, the Jencks case does not say any statements made to Federal officers or Federal agents, and the spirit of the Jencks case is aimed at furnishing the defense and their counsel the documents upon which the prosecution relied in presenting the Government's case. The Jencks case says—

The Court: Let me at this point ask a question of Government counsel.

Does the Government Tender No. 9, which at the top says "Diego Heras, Questions by Gresham," does it contain the testimony of anyone except Diego Heras?

Mr. Wilkey: No, Your Honor. It is Mr. Heras exclusively.

The Court: And likewise, Government's Tender No. 10, does it—"Questioning, Sam H. Burris." Does it contain the testimony of anyone except Diego Heras?

Mr. Wilkey: No, Your Honor.

The Court: Very well.

Mr. Wilkey: I call your attention further that Government Tender No. 10 is dated May 31, 1956, after the date of the return of this indictment.

Mr. Foreman: May it please the Court, and prior to the date of the trial of this case. The Jencks case does not state that it is binding on agents of the Government, such as Internal Revenue, FBI, or post office inspectors. It says it is binding on the United States as represented by the District Attorney, so it wouldn't matter, in our interpretation of the Jencks case—

The Court: If you are referring to specific language of the Jencks case, I would like to locate it.

Mr. Foreman: I draw that conclusion from this language. I think first the District Attorney draws his conclusion from the fact that—

The Court: I would like to locate what it is you draw your conclusion from.

Mr. Foreman: It is the last paragraph, reading:

"We hold that the criminal action must be dismissed when the Government, on the ground of privilege, elects not to comply with an order to produce for the accused's inspection and for admission in evidence relevant statements and reports in its possession of Government witnesses."

That is Diego Heras, touching the subject matter of their testimony in the trial. Now, under the rule of

criminal construction in criminal cases, applying the same rule to the Court's decision that the Courts apply to the statutes, only that which is said may be given meaning, and every word that is said should be given meaning, and the Court is bound, I think, to assume that if the Court had meant anything else or had meant to limit, it would have included such other words. And when I say it is binding not on the agents and FBI agents, Internal Revenue agents, and post office inspectors, I have reference to the next sentence, "The burden is the Government's, not to be shifted to the trial judge to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of State secrets and other confidential information in the Government's possession." The argument advanced by the District Attorney is that it is a State secret. Of course, this means in this opinion the United States, but nevertheless it is in the possession. He claims that it is confidential information. This opinion excludes that as a defense to the prosecuting attorney refusing to deliver the requested testimony of this witness or the statements he made to an Attorney General, Willis Gresham, or a District Attorney, Sam H. Burris, being subject to this because for the defendants in this case, and this whole thing, the whole spirit of the Jencks case is to dispel the idea or the conception, as I understand and interpret it, that the prosecution can claim privilege. The privilege he is now claiming, it is our contention that this testimony, having been delivered and certainly used by him in the preparation for the trial of this case, and it being of the witness who has just finished his direct testimony and before cross examination is commenced, and it being—

The Court: I think this comes within relevant state-

ments or reports in possession of the Government touching on the witness' testimony.

Mr. Foreman: There is no need for me to talk further.

Mr. Wilkey: There is one proviso I wish to make in regard to these Tenders 9 and 10, and that is since they were taken not by Government agents working with us, we have no means or knowledge of the accuracy of the transcript or indeed of the methods which were used in transcribing them. We cannot in any way vouch for the accuracy of them.

The Court: I don't think you are required to, but in considering the Jencks case, I think it does come within relevant statements or reports in the possessin of the Government of witnesses touching the subject matter of their testimony at the trial.

In Government's Tender No. 10, the very first thing, something that catches my attention—

Mr. Wilkey: It is highly irrelevant and immaterial to this trial.

The Court: It opens up with, "Hello Daddy-O," and this Court would like to know, who is Daddy-O?

Mr. Wilkey: Your Honor, we will be unable to answer that because we don't have full information about that.

Mr. Foreman: Your Honor, I attempted to go into this, who this man Daddy-O was, in New Braunfels, and they wouldn't let me.

The Court: I notice they are marked G-9 and 10, and I am going to request they be marked GT-9 and 10, and I want all the others so marked, and the Court overrules the contentions of the Government, and those Government Tenders 9 and 10 will likewise be subject to examination by the defense.

Mr. Foreman: May it please the Court, may we ask Mr. Wilkey—

Mr. Wilkey: Then we tender Government's Tenders 9 and 10 to the defense for inspection.

Mr. Foreman: We will acknowledge receipt of them as soon as he gets through marking them.

The Court: Is there anything further?

Mr. Wilkey: Yes, Your Honor, there are two other matters. The first matter is—

Mr. Foreman: We are not through with this. We want to make sure—there is one set of statements that may or may not be included, that this man has heretofore testified about, and I want to ask if they have it after those are received.

The Court: Wouldn't that be more orderly, Mr. Wilkey?

Mr. Wilkey: If he has further demands to make.

Mr. Foreman: I am not sure, but he testified to something at a former trial, and I just wanted—

The Court: Can you gentlemen give me any idea how much time this will take? I would like to let the jury stand at liberty.

Mr. Foreman: Do you want us to do that before we finish with any other request we have?

The Court: If you gentlemen now have any idea how much more time will be required, I want to tell the jury they may stand at ease. I understand now they are standing outside the door waiting to come back in.

Mr. Foreman: You mean by that our request, or the examination of these before commencing cross examination?

The Court: Both.

Mr. Foreman: Your Honor, it will take several hours.

The Court: That is the reason I am making the inquiry now.

Mr. Foreman: I just wanted to make sure. As the Court sees, some of these items contain as many as twelve or fifteen single-spaced typewritten pages, several of them do, and some of them almost, I would say, twenty. And there is a great deal of detail, checks set forth, that will need checking against Government's Exhibits 1, 2, 3, 4 and 5, and I would estimate six or seven hours would be required for examination of them.

The Court: Is there anything this Court can do to utilize its time between now and five o'clock?

Mr. Foreman: I know of nothing because I think we should go ahead with the cross examination. We won't be prepared to until we have digested these exhibits, except for going ahead with our request for other items, which we propose to do.

The Court: I suggest you do that now.
What do you wish to say, Mr. Wilkey?

Mr. Wilkey: We have two other matters to take up with the Court. First of all, in regard—

Mr. Foreman: I am not trying to run the Court, but I thought this was coming after we got through with the exhibits?

The Court: I have asked a question now, how long a time is going to be required, and I want the assistance of both of you.

Mr. Wilkey: I think these matters should be discussed now while the jury is out, and while we are on this point.

The Court: Do you think the jury should be excused until tomorrow morning?

Mr. Wilkey: Unless, and I am in no way trying to tell counsel how to proceed with his cross examination, unless he wishes to go forward with so much cross examination as he has been able to do in four trials without these documents, and examine these documents this evening and go on in the light of these documents tomorrow.

That is only a suggestion in the interest of time, and if he feels he should not like to start cross examination until he sees the documents, I can see the possible desirability of that.

Mr. Foreman: May it please the Court, I prefer to handle these in a clear, logical manner.

The Court: I will say this to the District Attorney, I think it is pointless to be sniping at each other when the jury is not here.

Mr. Foreman: May it please the Court, it gives the jury the impression that counsel is not perhaps as adept or has the knowledge of the case as he should have. I would like to exhaust the topic as we go along, and I feel I would be handicapped and might have a very different way of approaching it. It is not my desire to keep this man on the stand longer than I have to, and I think I should complete him a day or two sooner—

The Court: Are you both in agreement we should excuse the jury until tomorrow morning?

Mr. Wilkey: Yes, Your Honor.

Mr. Foreman: Yes.

The Court: Ask them to come in, please.

(The following proceedings were held in the presence and hearing of the jury.)

The Court: Gentlemen of the jury, it appears that the balance of the day will be taken up with matters that must properly be conducted out of the presence and hearing of the jury, so I am going to excuse you until tomorrow morning. You are again reminded of the instructions previously given, and you are excused until 9:30 tomorrow morning. Thank you.

(The following proceedings were held in the presence and hearing of the jury.)

Mr. Foreman: May it please the Court, the first further request we have is for the testimony of this witness before the Federal grand jury.

Mr. Wilkey: Your Honor, it is the Government's position that that is not covered by the Jencks opinion.

The Court: That is the opinion of the Court. I don't know what the Supreme Court may say about it. Has the Supreme Court said anything about it?

Mr. Foreman: Not that I know of. I was—

The Court: This Court will deny that request.

Mr. Foreman: We would like to establish the fact that he does have this testimony and has it in the courtroom and had it prior to the time the trial started.

Mr. Wilkey: I do not have it in the courtroom, and it is in my office, and until it is—

The Court: It is my opinion it is privileged, and secret, and I will rule, subject to all risks, that you cannot have it.

Mr. Foreman: We would like to know from the prosecuting attorney if there were any other statements or reports relating to the testimony of this witness, Diego Heras, not in his possession and which he has not produced but which he has knowledge of and which are subject to being produced by him should I so desire.

Mr. Wilkey: There are none not in my possession that I have any knowledge of which relate to the testimony of this witness, which I could produce—

Mr. Foreman: May I ask please—

Mr. Wilkey: —and with specific reference to the statement made by the witness to the FBI that you inquired about yesterday, after interrogating the witness on the stand, I reiterate what I said yesterday, that while I have knowledge of that statement and have seen it, I have never had it in my possession and do not have it at this time. Further, they relate to a collateral matter to this trial. As a matter of fact, it occurred a year before I took office and before this prosecution was undertaken.

Mr. Foreman: Nothing that we may say is pointed personally to this prosecuting attorney, but to the Government of the United States as represented by him, Your Honor. May I ask, Mr. Wilkey, if except for that statement about the $15,000 that he took or didn't take, or said he took and said he didn't take, from George Parr to George Denton, that that is the only other such state-

ment you have had or had access to or now have control over, if you desire to exercise such control by requesting it, been produced, that you have seen or had in your possession that you know about.

Mr. Wilkey: Aside from the matters referred to in the George Denton alleged episode, and the statements made by the—with reference to that I have no knowledge of any other statements or anything falling within the purview of the Jencks case which I have access to or possession of, aside from the matter we have already mentioned.

Mr. Foreman: Pardon me. I know that you are not attempting to evade or avoid or sidestep, but trained as I am to interpret and look askance to every inserted phrase in a statement, have you any, whether or not you think it applies to the rule in the Jencks case, or not, any statement made by this man that you would be willing to submit to His Honor and let his impartial appraisal of that statement be the judge or the modicum by which it would be entered into this other tender or not?

Mr. Wilkey: Aside from the matter referred to of George Denton and this witness, I have no statements or records of interviews, or anything of that nature pertaining to the testimony of this witness.

Mr. Foreman: Would the District Attorney tell us where that statement is, the George Denton episode, so far as the District Attorney knows? Who has it?

Mr. Wilkey: It is in the possession, or was in, last summer and early fall—I can't remember the exact date it was in the possession of the FBI and it is my belief that it is still there.

Mr. Foreman: At what point in the United States or of the other States or Courts where it operates?

Mr. Wilkey: It would be my belief that it would be in Houston, but I am not certain. I would say that would be the proper location.

Mr. Foreman: Could you, if you desired, ask them to produce it so His Honor might pass on it and in the event —that the record of the case might reveal, so that we might have a review of His Honor's interpretation of whether it should be or not delivered to counsel for the defendants?

Mr. Wilkey: I must decline to request the Federal Bureau of Investigation to produce any of their documents here in this case. That matter related to a personal matter of the FBI. Such matters are kept very closely within the control of the FBI, and I do not know that I have any power to make such a request that would definitely be honored, and I do not care to make any such request. I think the request should be made and addressed to the FBI, but I don't think I am the one to do it.

Mr. Foreman: Are you or not the attorney for the FBI in such matters, if there is an attorney in the Southern District of Texas?

Mr. Wilkey: I suppose that I and members of our office are the attorneys for the FBI on repsesenting them in court on other matters in the Southern District of Texas, but we and the FBI are governed by certain executive orders and certain procedures, and I don't have

it in my possession and, not having it in my possession, I don't care to go outside of what is in my office to produce documents, which after all antedate this procedure concerning a personal matter of the FBI, and which occurred a year before I took office, and the possession of which, although I have looked at it, the possession of which I have never had, because of the rules and regulations of the FBI in regard to personal matters.

The Court: I have heard your discussion, but I don't have it clear in my mind what is now requested. Would you state it again, please?

Mr. Foreman: There is a statement made by this witness concerning—to some representative of the United States Government, and agent or agents of the FBI, to which this witness—

The Court: Is it the $15,000?

Mr. Foreman: Yes, Your Honor.

The Court: A question that you have spoken of before?

Mr. Foreman: Yes, Your Honor, and we state to the Court that in view of the very damaging nature of the testimony of Diego Heras, if accepted as true by this jury, that his credibility is the principal issue in this case and we say to the Court that the statement referred to as the Denton episode statement will be, we think, a salient point.

The Court: The request is that it be submitted to the Court for the Court's determination?

Mr. Foreman: Yes, it is, Your Honor.

The Court: Are there any other similar requests?

Mr. Foreman: Yes, Your Honor.

The Court: For instance, I ask for the reason I don't want to send for Mr. Burton and when he has been here and gone, send for Mr. Burton again.

Mr. Foreman: None of the nature of Diego Heras, but we would like to have furnished us each, any, all and every statement or report of an interview by any FBI agent and also any Internal Revenue agent or postal inspector, or any district attorney, any grand jury testimony or any Attorney General of Texas, furnished to the prosecution or available to him, subject to his direction or order, made by either W. M. Benson or Mrs. Edna Fitch.

The Court: Mrs. Fitch has testified. I don't believe Mr. Benson has.

Mr. Foreman: He has not, and I would assume—

The Court: Will Mr. Benson testify?

Mr. Wilkey: Yes, Your Honor.

The Court: Well, according to the previous ruling of the Court, I don't think the defendant is entitled to ask for it now and until and when he has testified. As far as Mrs. Fitch is concerned, I think she would be subject to

the same rule that we are applying for Mr. Heras. Do you have any such for Mrs. Fitch?

Mr. Wilkey: Your Honor, Mrs. Fitch has testified, cross examination has been had without any such demand as this having been made. She has now been excused as a witness. The defense has had their opportunity to examine her and they made no such demand at that time for such instrument, so we submit that the demand is not timely.

The Court: What says the defense so far as Mrs. Fitch is concerned?

Mr. Foreman: It is quite true she has testified and—but, as the Court knows, this Jencks case was not the acknowledged law, although we anticipated it in our motion as to Diego Heras in advance, that it would probably be the law, and counsel for the defendants made a request in the trial of this case that would have been a valid request if the Jencks case had been decided but, may it please the Court, we propose, after examination of such statement or testimony of Edna Fitch before the Duval County grand jury, or statements to the District Attorney, or Attorney General, or agents or emissaries or representatives of the Federal Government, or any other person which was duly furnished to the prosecution or given to us and we find a discrepancy in her direct and cross examination up to now, we propose to have a subpoena issued, ask this Court to permit us to call her for further cross, and since this case has not been closed, and if we could make a valid showing to the Court that is proper, we believe the Court would permit us to do so, and as far as her being excused, every witness is excused, who

has been excused, subject to being recalled. That is my uderstanding of the Court's ruling, and that is my attitude so far as Edna Fitch is concerned.

So far as Mr. Benson, unless the Court has some reason, I suggest to the Court notwithstanding the fact that I recognize it does not come within the rule as to when it should be furnished, that the furnishing it to us now would perhaps expedite the trial of this case and eliminate the necessity of the request of another recess.

The Court: That may be true as far as Benson is concerned, and if the Government wants to give it to you now in the interest of expediting the trial, they are at liberty to do so, but I don't think I am called upon to order them to do so at this time.

Mr. Foreman: I am not arguging with the Court. I accept the ruling of the Court, but I believe Mr. Wilkey has already stated what my co-counsel asked me to ask, and that is, where the FBI statement is, and he has stated it is here and would be in Mr. Burton's possession. We also will request that we have all the Heras testimony, the Federal grand jury testimony of both William E. Benson and Mrs. Edna Fitch.

The Court: Those requests will be and are denied. The Court will order any production to the defendants of any such statements it may have, that the Government may have, in its possession concerning statements made by Mrs. Fitch who has previously testified. As to the statement referred to purportedly made by the witness Diego Heras concerning the payment or nonpayment, or the

statement or non-statement about $15,000, if it is in Mr. Burton's file I want it produced for examination.

Mr. Wilkey: That raises a question on procedure, Your Honor. It is our position that in the case of the statement in possession of the FBI, that that is an entirely collateral matter. It is not something in our possession in the prosecution of this case.

The Court: I understand that is the reason for the suggestion it be tendered to the Court for examination, and have the Court decide whether it had any relation or bearing in this case concerning the testimony of the witness Diego Heras in this case or has any bearing upon his credibility.

Mr. Wilkey: I point out, Your Honor, we will probably have to argue later. I point out at the outset, if it is a collateral matter, if the witness is asked about it on the stand and he makes a statement about it, that that is not subject to impeachment but outside evidence on the Rule, Attorney General vs Hitchcock, of what is a collateral matter, and that would be the basis on which we would ask the Court to consider this statement.

The Court: You know, I don't know whether anything would be collateral now.

Mr. Wilkey: Oh, yes, Your Honor, there are some matters here—that is the next point I wanted to take up with the Court, the process in the use of these documents for questioning. It is true that when the reports are show to relate to the testimony of the witness that the reports must be tendered for examination, but afer they are tend-

ered for examination, then it becomes the Court's duty, under this decision, and again I am—

The Court: I understand the request is they be submitted to the Court for determination of whether they do relate to the testimony.

Mr. Wilkey: I am going from the FBI documents to those that have been tendered already.

The Court: Yes.

Mr. Wilkey: "After they have the opportunity to inspect, but before they can use them in cross examination, the Court must determine only after inspection of the reports by the accused must the trial judge determine admissibility, that is evidently questions of inconsistency, materialty and relevancy of the contents, and the method to be employed for the elimination of parts immaterial or irrelevant."

We suggest that the proper procedure is for the defense to go through those and indicate to the Court what portion they consider inconsistent, material and relevant on which they wish to examine Mr. Heras, and then we will have an opportunity to urge as to whether there exists any consistency or inconsistency in the statements. As is well know, it is a well established rule of law prior to this case, and confirmed by the Supreme Court just before this case, the question of impeaching testimony is in the first initiative for the Court and passed on by the Court before the witness is required to answer.

Mr. Foreman: Can't we pass on these fundamental elementary rules of law at the time the objection comes up?

The Court: I want to hear what you have to say.

Mr. Wilkey: That is precisely the point I am getting to. If the question or the statement made by the witness Heras is in fact not inconsistent and is not material to the testimony as given on cross or direct, then the defense has no right to go into that portion of the statement. It is only those portions of the statement which are material and relevent, and inconsistent with his testimony, either on cross or direct, that they have a right to go into. The rule of law is not that they have a right to go into all impeaching testimony of prior inconsistent statements, has not been changed one whit by the Jencks decision. What has not been changed is that they have the opportunity to inspect all documents to search for those items which may be inconsistent, which may be relevant an material for impeachment purposes, but the search is all that has been enlarged upon by the Jencks decision. The question of materiality and inconsistencies are still, in the first instance, for the trial judge.

The Court: You have the New York Times?

Mr. Wilkey: Let me pass it up. The fourth column, about midway of the page, just above "no privilege claimed."

The Court: The entire paragraph before "no privilege claimed"?

Mr. Wilkey: The last sentence of it is the part I was referring to.

The Court: I am going to review the entire paragraph there.

Mr. Foreman: Would you review this one also?

The Court: I am just going to take them one at a time.

Mr. Foreman: If you review this one, you won't have to review anything he said.

The Court: I am not reviewing anything he said. I am trying to review what the Supreme Court said.

Mr. Foreman: That is what I am trying to read you.

The Court: That is what I am going to read to you, if you will be seated. "The practice of producing Government documents to the trial judge for his determination of relevancy and materiality without hearing the accused is disapproved."

What does it mean "without hearing the accused"?

Mr. Wilkey: I imagine it means outside the hearing of the accused, en camera testimony, is my interpretation.

The Court: Oh, yes. "Relevancy and materiality. For the purposes of production and inspection, with a view to use on cross examination, are established when the reports are shown to relate to the testimony of the witness." Yes. "Only after inspection of the reports by the accused must the trial judge determine admissibility."

Mr. Foreman: May it please the Court—

The Court: Just a minute now. I am again confused about what they mean by the "use of the accused." Do they mean the defendants in this case?

Mr. Foreman: I think they mean the defendants in any case, Your Honor.

The Court: "Only after inspection of the reports by the accused must the trial judge determine admissibility, that is evidently question of inconsistency, materiality, and relevancy of the contents and the method to be employed for the elimination of parts immaterial or irrelevant," and they cite the Gordon case. What is it you wish to say?

Mr. Foreman: I would like to say what we are—he is now anticipating and asking for an anticipatory ruling which could keep us here until five o'clock, and we would like to devote it to what the Court adjourned for. You can't make a ruling in advance.

The Court: You said you wanted me to read some other portion.

Mr. Foreman: It is in answer to his suggestion that unless there is something affirmatively in the statements that conflicts with the testimony it can't be referred to. Here is what the Supreme Court said— the very fact that it isn't in here itself is subject to being considered impeachment, and that is what the Supreme Court says in the Jencks case. "Every experienced trial judge and trial lawyer knows the value for impeaching purposes of

statements of the witness before time dulls treacherous memory. Flat contradiction between the witness' testimony and the variance of the events given in his report is not the only test of inconsistency. The omission from the report of facts related at the trial or a contract in emphasis upon the same facts, even a different order of treatment, are also relevant to the cross examining process of testing the credibility of a witness' trial testimony." All that does is lay down well known guides the trial judge should follow as to inconsistency and relevancy. It also lays down the fact that consistency doesn't have to be in here. The fact that he testified something, that he never did make a statement somewhere else is testimony, impeaching testimony, and subject to being considered such. That is my point.

Mr. Wilkey: Well, if that is the nature of contradiction or inconsistency, I presume if it is the Court would allow such questions to be asked in reference to these documents. That merely is a guide to the judge to determine what may be asked.

The Court: I want to communicate to Mr. Burton. For the record, Mr. Burton is Special Agent in charge of the Houston office of the FBI, Mr. George Burton. I will communicate to him, through the United States Attorney that I want to inspect the statement referred to, the statement purportedly made by Mr. Heras concerning Agent George Denton, referring to $15,000.

Mr. Foreman: Would you ask for all such statements? We think there were two. We think he made one one way and one another way.

The Court: All such statements, and I will ask that they be in my chambers tomorrow morning at nine o'clock.

Mr. Wilkey: Thank you, Your Honor. We will so do.

The Court: Now, concerning the requested statements relating to the witness Mrs. Fitch. What does the Government have in that respect?

Mr. Wilkey: Your Honor, I don't know. Mrs. Fitch was on the stand three weeks ago, and I haven't looked at her file since that time, and I have not looked at her file in connection with the Jencks case, or that of any other witness prior to the Jencks case because I felt cross examination had been completed, and that if the defense called back those witnesses, which we agreed to do, they came back as witnesses for the defense, not us, so I haven't looked at our files and I still urge upon the Court if Mrs. Fitch comes back, she comes back as a witness for the defense if the defense wants her back.

Mr. Foreman: That is up to the Court. Before we will attempt to make an effort, we must have the statements, whatever showing is necessary for further cross. It is within the discretion of the Court to do it if the Court thinks she would be our witness. It is for the Court to do it.

The Court: It is suggested the United States Attorney give the Court the file and release whatever statements as made by Mrs. Fitch.

Mr. Wilkey: We will do so, Your Honor, and in regard to Mr. Benson, I believe there were three statements of

Mr. Benson. I don't want to be bound by that number, but there were three or more.

The Court: Do you want to tender them now?

Mr. Wilkey: No. We have not had a chance to ascertain what we have.

The Court: You are not required to. As far as Mrs. Fitch is concerned, how long will it take you to get her file? Is it in your office?

Mr. Wilkey: Yes, Your Honor. I think we can tender them to counsel this afternoon.

The Court: Very well. Will there be any dispute as to whether you have them here or not?

Mr. Wilkey: I think not, Your Honor.

The Court: Very well. I suggest that they be made available to counsel this afternoon, all such statements in your file made by Mrs. Fitch.

Mr. Wilkey: We have another point, the second point to take up.

Mr. Foreman: That would, of course, include her grand jury testimony furnished as the other testimony was furnished.

The Court: The invalid Duval County grand jury, is that the one?

Mr. Foreman: That is right.

Mr. Wilkey: We will furnish any such question and answer statement, whether made before the grand jury or anybody else, by Mrs. Fitch.

We wish to take up a matter bearing on the Grunewald case decided by the Supreme Court Monday before last. That bears on the cross examination of the witness Mr. Heras here by the defendants, and it is a matter which I think should be ruled upon and considered outside the presence of the jury because of the possible prejudicial nature of the matters involved. Mr. Bottler has the opinion, and wishes to call certain things to the Court's attention.

Mr. Foreman: May it please the Court, can't I be excused? Can't the Court read this and take it up with counsel in chambers in the morning?

The Court: The Judge will not have much time in chambers in the morning. We are operating on a short schedule.

Mr. Foreman: I submit this Court and practically everybody that practices in Federal Court has heard the Grunewald case and does not need to have it read to him. I would like to save that much time.

The Court: I want to hear what the claims of the Government are, and I will hear the Government at this time.

Mr. Bottler: The Grunewald case came down on May

27, 1957, this week previous to this. The point that was brought out and laid down by the majority in that case, which is applicable to the cross examination of the witness Diego Heras, bears upon the use by counsel of a certain deposition taken by Mr. Parr's attorney from Mr. Diego Heras in a libel suit brought by Mr. Parr against Diego Heras for certain statements which appeared in the newspapers concerning the Benavides Independent School District and thefts therefrom. After the deposition was taken by Mr. Parr's attorney, the suit was dismissed but the deposition remained. In that deposition, certain questions were asked of the witness Diego Heras to which he claimed his constitutional privilege that the answer might tend to incriminate him, and he declined to answer. The Supreme Court has said that the law of the land is that the exercise of the constitutional privilege is not necessarily to be used as impeaching the witness, as impeaching his credibility. The majority said, with Harlan, that the initial test to be made is that the prior staements may be used to impeach the credibility of a criminal defendant, or an ordinary witness, if the Judge is satisfied that the prior statements are in fact inconsistent, and the Court goes on to say that another previous Supreme Court case, Raffel, should not be considered as dispensing with the need for such preliminary scrutiny by the Judge, that is, to determine whether or not the answer could tend to incriminate him is inconsistent with the statement or testimony given by the witness. The majority goes on to point out that in the Grunewald case the testimony of the defendant Halporin was not inconsistent with his plea of the Fifth Amendment. In fact they said under the facts of the case and circumstances, it was consistent with his plea of innocence. The Government will take the position in this case that the response of Mr. Heras in the

deposition, that the answer would tend to incriminate is not inconsistent with his testimony here because his testimony here has been that he did participate in the embezzlement and felonious theft or use of the funds of the Benavides Independent School District under the direction and control of Mr. George Parr, so we will ask that when the time comes, that any cross examination is undertaken based upon those answers where the Fifth Amendment is plead by Mr. Heras, that outside the presence of the jury the Court make the preliminary scrutiny indicated by the majority in the Halporin case. We point out there was a concurring opinion of four Supreme Court Justices. The reason they concurred rather than arguing with the Harlan opinion was that they could think of no special circumstances that would justify the use of the constitutional privilege to discredit or convict a person, so we will ask if the deposition involved in that case is gone into that the Court make a determination of whether the claim of privilege was inconsistent. If it is not, it should not be gone into.

The Court: You mean as to whether or not counsel can properly question him him about it?

Mr. Bottler: That is correct. That is what was involved, as a matter of fact. That was the reason for the reversal of the Halporin convictions in the Grunewald case.

Mr. Foreman: As I understand, the reason for the reversal of Halporin's conviction in the Grunewald case was because the judge didn't in advance rule on whether a certain question should or should not be asked.

Mr. Bottler: He ruled incorrectly, Your Honor, that the question could be asked. We are seeking to not lead the Court into error, but to give the Court a chance to rule correctly. Of course it wouldn't be error in a criminal case. It would be prejudicial to the Government that we are entitled to freedom from undue prejudice as are the defendants.

Mr. Foreman: May it please the Court, it is impossible for me, of course, to look within the minds or hearts of the advocate and state what he is intending to do. They have the facility for doing it, but I do not, but I do know the burden of the argument is that the prosecution again in this District, and the only place I ever knew of anywhere in the world, is asking this Court to rule in advance on certain evidence not now before the Court, that they do not know whether it will be or not, and before it comes up, and therefore to tie and hamstring counsel for the defense in the interrogation from affording whatever experience or ability he has, or knowledge in his subconscious mind, where the rules and the evidence, which is where all the knowledge of lawyers are, or in all trial lawyers, in his subconscious, but to have counsel reach down into subconscious and supplant whatever is in his mind, in his subconscious, for fear of attempting to transgress the ruling of this honorable and respected and fair Court, and it isn't fair, and isn't any ruling of or by the Supreme Court or any Judge to pass on admissibility before it is asked.

The Court: In the Grunewald case, was there a request for advance ruling?

Mr. Bottler: No, there was a request—

Mr. Wilkey: Yes, objection was made to the question in an attempt to impeach the witness, who happened to be the defendant in that case, but this opinion says it applies to any ordinary witness as well as the defendant. It was an attempt to impeach the witness by referring to his previous question and bringing out that he had plead the Fifth Amendment at that time when previously asked. The Court considered it, ruled that the question could be asked, and he was asked and asked if he didn't plead the Fifth Amendment before, and the witness admitted he did. That is the point on which the thing was reversed. In this case, we are asking the Court to consider these questions and after all, they are going to be limited, because they relate to the question which are written down in the deposition. They are there. We have to consider whether those questions in the deposition already written and are consistent or actually contradictory of anything the witness testifies to. If the Court rules, the defense will know whether it can ask those questions or not. As far as this prior ruling, we have had two cases in two actions, the Grunewald case and the Jencks case, which indicate it is the duty of the judge to pass on the permissibility of these questions before permitting the interrogation. What this defense counsel would always like to do, Your Honor, is ask an improper question and let the Court rule thereafter and not preserve the right of the Government to also present its case free from prejudice, but we ask, since these questions, like the questions in the documents we have tendered the defense, since these questions in the deposition are written down and limited to that, in these case it is feasible for the Court to examine the questions and consider whether they are inconsistent, relevant or material to the testimony of the witness and rule whether counsel may refer to them or not.

Mr. Bottler: I would like to make one additional thought. We are not asking the Court to rule today on the matter of the cross examination.

The Court: Cross examination will commence tomorrow morning?

Mr. Foreman: I doubt it, Your Honor. I think we will still be here.

Mr. Bottler: What we wish to do is be allowed to make our objection and get a ruling on this question outside the presence of the jury, as Mr. Foreman has done it on occasions when he has had—we have all gone to the Bench and he has said "I think I know what this witness is going to testify to and may I make the objection outside the presence of the jury." We are asking the same rights that have been accorded the defense so our rights may be protected. If defense counsel asks, "Were you asked this question and did you give this answer, 'I refuse to answer on the grounds it tends to incriminate me,'" prejudice has been done.

The Court: I want to be sure I understand something that has been said about his claim of possible self-incrimination, something was said about it being not inconsistent with the position taken here.

Mr. Foreman: May it please the Court, Mr. Wilkey answered yes awhile ago to the very gist of this question. I wish the Court would ask that question again and he would answer yes or no and leave off the argument. I wonder if that answer yes was to the Court's question, was there a preliminary question requested in the Grunewald case. He said yes.

The Court: I don't think he did.

Mr. Wilkey: Judge, I don't know. I know the question phrased to the Court to rule on it, the Court ruled erroneously and was reversed. I want this Court to have a chance to rule correctly without prejudicing the Government or have it questioned outside the presence of the jury.

The Court: I want my question answered now.

Mr. Foreman: I missed it.

The Court: That is not the question I am referring to.

Mr. Foreman: Another question?

The Court: I am referring to the question I just asked, and I will ask it again. Something was said, I don't recall who it was said by or who it was, but something to the effect that the claim of the witness to possible incrimination being not inconsistent with the position taken here. What is that? How does the Grunewald case touch on that?

Mr. Bottler: Very clearly. In the Grunewald case, the Court said the defendant got on the stand and protested his innocence. They said because under the circumstances under which he testified he could say in answer to certain questions, I believe that answer would tend to incriminate me, and that is, of course, that is right because you cannot draw a conclusion from the plea of the Fifth Amendment under those questions the man was actually guilty of the crime. They said in connection with the plea of the Fifth Amendment it was consistent with innocence. In our case,

Mr. Heras has testified fully and frankly to the fact that he wrote those checks, cashed them, knew they were fictitious, endorsed them with fictitious endorsements—

The Court: Did it over a period of time.

Mr. Bottler: He has said, in other words, I have done acts which are—I know to be guilty, make me guilty. He hasn't said that, by confessing to acts anyone knows would make him guilty under any statute in Federal and State Government. He is in fact confessing his guilt. In this deposition, he said, "I refuse to answer on the grounds it may tend to incriminate me."

The Court: And if he did testify there, it would have.

Mr. Bottler: It would have, right.

The Court: I agree.

Mr. Bottler: So the answers are not inconsistent in the deposition and cannot be used as inconsistent to impeach the man on credibility nor can they be used for his prejudice on the grounds of the Fifth Amendment. In previous trials, these questions were asked. In anticipation we have read the Raffel case and could not make a valid objection, but the Grunewald case—

The Court: What other case did you mention?

Mr. Bottler: The Raffel case mentioned in the Grunewald case, and virtually overruled it, as I think Your Honor will see when he reads the opinion.

Mr. Foreman: I intend to take up the admissibility of my questions, of course, subject to any order of the Court to the contrary, but nevertheless either in the presence or without the presence of the jury, and with the indulgence of the Court. I know of no place anywhere that authorizes, except in the minds of college professors, no law practitioners, to ask the Court to rule in advance.

The Court: It has been done by you.

Mr. Foreman: Not in the manner he is asking this Court to do it, to abjure or instruct. The only time I have been to that bench is to avoid the request of the jury being retired. I haven't asked the Court to make an advance ruling except on their statement of what would happen, and I am not ready to get to that point and I do not admit that the Grunewald case—

The Court: I forget the question, but a few days ago you asked for an advance ruling, I believe, and my recommendation was, I asked you if you would have any objection to the United States Attorney asking leading questions and then it could be avoided that way.

Mr. Foreman: Of course, I suggested that, Your Honor.

The Court: What was your preceding request? That was suggested because you had requested an advance ruling on something.

Mr. Foreman: I asked that the man be taken out so the Court could pass on the admissibility of the testimony,

and you suggested, if you remember, Your Honor, he asked leading questions and held him to that point. That is what happened at the bench.

Mr. Bottler: That is what we asked for, Your Honor. We asked for an advance ruling on testimony. He asked for an advance ruling on testimony that was not even written down, but on testimony of what he said he knew he would testify to. I am asking for a ruling on testimony written down in black and white.

Mr. Foreman: I suggest the prosecuting attorney furnish the Court a brief, and let's do the same so we may have our recess, unless the Court wants to give us two hours in the morning. If we are going to get any work done—we are not going to get it down on the point we recessed for. The effect is to keep us from doing anything but haranguing us on something, not where we are now. It is a filibuster. It is above what they intended. I can't see into their hearts and mind. That is the effect of it.

Mr. Wilkey: Who is filibustering? We asked for certain things regarding the cross examination of Diego Heras.

The Court: The Court will rule on Government's request tomorrow morning. Anything else?

Mr. Bottler: Would the Court like the law, a copy of the Grunewald case?

The Court: I have the Supreme Court's draft of it. Court will adjourn until 9:30 tomorrow morning.

MORNING SESSION—JUNE 7, 1957

(The following proceedings were held out of the presence and hearing of the jury.)

Mr. Foreman: May it please the Court, we have some additional requests of reports which should be, we assume from the evidence of this case, in the possession of the Government. The Court will recall that while Mr. Main was on the stand, I asked him and he checked a list. We didn't offer the list in evidence, but I have the list of some 48 witnesses that he had interviewed. I presume he made reports of those interviews, and as I interpret the language "or reports in its possession of Government witnesses touching the subject matter of their testimony," that applies to those witnesses who have testified, and any reports of any testimony or interviews by Mr. Main the defense would be entitled to, and it includes some 48 names.

The Court: We have had more witnesses than that, haven't we?

Mr. Foreman: Yes, but he hadn't talked to 11 of them. He was the 59th witness, Your Honor, and he had talked to, I think, 48. Shall I have the record reflect their names in order to make the request formal?

The Court: In the interest of an orderly procedure—I had anticipated such a motion, but in the interest of an orderly procedure, we are now on the interrogation of the witness Diego Heras, and don't you think we ought to proceed with his testimony?

Mr. Foreman: May it please the Court, I propose from the time I leave here, as soon as I get a judgment entered in a State Court case, to direct all my afternoon and tomorrow and the next day to working on this, and I believe if we could be getting this, whatever we are going to get, and get it before we recess today, I wouldn't have to ask for any more time.

The Court: I would like to use this time for cross examination of the witness Diego Heras.

Mr. Foreman: I had anticipated—shall I go ahead with the witness?

The Court: There are some things pending relative to the motions made in connection with the witness Diego Heras that I intended to make some announcements on this morning.

Mr. Foreman: I am sorry.

The Court: I believe one of them is the matter of whether or not you could ask the witness Diego Heras if he had, on a previous occasion, invoked the Fifth Amendment. This Court rules that you can ask him about that. This Court cannot conceive it should take a lot of time. I am anticipating that he would say that he has, and when he says that he has, it seems to me that that would be the end of it.

Mr. Foreman: That is correct, Your Honor. That is our conception of it. We don't propose to go into it.

The Court: I have read the Grunewald case and some

other cases therein cited, and each of these cases had to do with defendants who have invoked the Fifth Amendment. Diego Heras is not a defendant. There has been something said in the Grunewald case about his present claim not being consistent with his previous claim of innocence, but the position of the witness Diego Heras before the Court is not inconsistent with his previous claim of possible guilt. I can certainly understand, after hearing his testimony, that he would have a right to claim his testimony may incriminate him because he has testified as he has here it would incriminate him, and I think that has to be faced. I don't think a lot of time should be spent on that, but I will permit you to ask him if he has, on a previous occasion, invoked the Fifth Amendment claiming his testimony would possibly incriminate him, and that will be allowed.

Now, coming to the two statements requested, which were in the possession of Mr. George Burton, the agent in charge of the local office of the Federal Bureau of Investigation, Mr. Burton has delivered them to me and I have them before me. The first is a statement in the handwriting of Diego Heras, dated Galveston, Texas, April 9, 1953, and the second is a handwritten statement of Diego Heras dated Benavides, Texas, April 11, 1953. I have before me the original handwritten statements. Mr. Burton has requested that these be returned to him and that he be permitted to substitute photostat copies, which he has in his possession. Is there any objection to that?

Mr. Foreman: No, Your Honor

The Court: Very well.

Mr. Burton, I will now swap you the original handwritten statements for the photostat copies of them.

Mr. Burton has advised me that most of the handwriting is not in the handwriting is not in the handwriting of Diego Heras, but is in the handwriting of an agent. It appears that some of it is in the handwriting of Diego Heras, but I will amend my previous description by saying they are handwritten statements, eached signed by Diego Heras, one dated Galveston, Texas, April 9, 1953, and the other dated Benavides, Texas, April 11, 1953. For purposes of identification, I am going to ask that the statement April 9, 1953 be identified as Government's Tender No. 11, and the handwritten statement dated April 11, 1953 be identified as Government's Tender No. 12. Now, as to the statement dated April 9, 1953, identified as Government's Tender No. 11, I have read it and it is my opinion that there is nothing in it that could be used relative to this case. It does not refer to this case. The only connection it has with this case is that it is the statement of the witness Mr. Heras.

Mr. Foreman: May it please the Court—

The Court: I haven't finished my statement.

Mr. Foreman: I am sorry, Your Honor.

The Court: Government's Tender No. 12 is the statement dated April 11, 1953, which is another handwritten statement signed by Diego Heras, which, in my opinion, can be used for purposes of impeachment. It reads in part, beginning near the bottom of the first page, "I

wish to state under oath that much of the information contained in my sworn statement of April 9, 1953, was false, and that I knew at the time I furnished the information that it was false." Now, he may be confronted with that to show that he has previously made false statements. It is the opinion of the Court that only that part of these statements should be used. Now, what says defense counsel?

Mr. Foreman: May it please the Court, in order to lay a predicate for impeachment, we think that the Rules of Practice provide that the previous false statement itself can be laid—and each one of such false statements—

The Court: Laid before the jury in this case, all of these irrelevant facts which he later says is false?

Mr. Foreman: I think that on an issue of the credibility of the witness, if a man said he was a son of the Prime Minister of Siam, and it was proved he was the son of an Irish policeman, and later said he was the son of an Irish policeman, if he had sworn to it and it was false—that is my conception. I don't think relevancy is, as to an impeachment matter, provided the man admits a fact under oath, and the fact of what he said were false—I had to submit this same brief on the same point to a Federal Judge in Oklahoma City once. I don't have my brief, but I know there is a lot of authority on it, and I would like the Court to reserve a decision on the first one until we can satisfy the Court with a memorandum brief.

The Court: What says the Government?

Mr. Wilkey: Your Honor, what the Court has said about the nature of the first statement is the foundation of why the second statement—why neither the first statement nor the second statement is relevant to this trial. The Court has said there is nothing in the first statement relative to this case. My recollection is that that is correct. The Court has said in the second statement there is matter relevant to this case, that matter being that the witness stated, yes, he admitted under oath that "I have made certain statements in the first statement which are not true." Now, then, what is admitted to be done here and all that is admitted to be done is they show that all matters which this Court has said itself do not relate to this case, the witness Heras has made a false statement. Now, it is a well established principle of law that individual inferences of false statements on matters not connected with the case on trial cannot be gone into with a witness to impeach his credibility. That is certainly collateral matters. In other words, if he had made any number of those in which the witness had made false statements, the individual inferences, unless related to this case, would never be admitted. They way to impeach a witness on his credibility, if the other side wishes to prove he has made other false statements, is to admit general evidence of his reputation for truth and veracity in the community. That is the Michaelson case, Michaelson vs the United States in the Supreme Court, in which Justice Jackson wrote a considered opinion pointing out individual instances of veracity are not to be used as impeachment on cerdibility but because they would project the Court into the realm of exploring the truth or veracity of every one of those isolated state-

ments, so when the Court said, if I recall it is correct, that there is nothing in the first statement that relates to this case, all purely collateral, then the fact that he may have admitted that part of that was not true—

The Court: Yes, it is my opinion the only thing relevant to this case is that the witness Diego Heras has admitted on a previous occasion he has made false statements about matters not relating to this case, and so far as that may relate to his credibility, it will be permitted.

Mr. Foreman: I still want permission—

The Court: I believe there are enough facts in this case that we don't have to go out into every other fact situation that may exist in Texas or elsewhere, having no relation to this case whatsoever.

Mr. Foreman: I am not going to argue with the Judge. I am not arguing with the Court.

The Court: I am not arguing with you. I am stating the position of the Court.

Mr. Foreman: I know the position of the Court and I know the Court is sincere in his position, and probably 100 per cent correct, maybe not legally but otherwise as to the evidence in this case, but I do want to tell the Court this, the Court of Criminal Appeals in the State of Texas citing a great many other cases and one of the longest compendium of authorities held this about credibility of witnesses, it was a worldwide—no, he was in the penitentiary. It was a chicken-theft case. He had been convicted of chicken theft, served time, and ad-

mitted burglarizing and stealing in Montgomery County, Texas, and among other things they held to be admissible on impeachment was the fact that he got a marriage license and swore a girl was 15 years old, after or before, but it had nothing whatever to do with the burglary but that was—the facts of that are in my mind, and the cases are in the books. I don't have the style of the case, but I tried that case.

Mr. Wilkey: Your Honor, the Michaelson case is controlling in this Court. There is a Supreme Court pronouncement on that. Your Honor, it is now twelve minutes until ten. The Court will work until twelve—

The Court: Do you think that will be the law of the Supreme Court the next time they pass on it?

Mr. Wilkey: Your Honor, I don't claim the gift of prophecy, but the Michaelson case is a very recent case and has been followed fairly recently since then, and does state the law as it has been since time immemorial. I am not through. I don't like to be interrupted.

Mr. Foreman: I apologize.

Mr. Wilkey: We would like the opportunity, before Mr. Foreman goes into the statement which the Court has passed on here, we would like the opportunity to submit a brief on that question which we can have by Monday morning. The reason is, of course, after—we could not do that until now, until the Court had inspected those statements and made its appraisal of them, but the Court has said exactly what we were prepared

to contend in regard to the contents. It is entirely collateral to this case, and I repeat, it is the established law in the Michaelson case and other cases where the contradiction or false statement is about matters collateral to the trial at issue, that individual instances of veracity cannot be shown because to go into individual instance to contradict the witness, you go chasing rabbits all over the country. As a corollary rule of that, Your Honor will recall the well-established rule on collateral matters even when the witness is tasked about them on cross examination, if a collateral matter, the cross examiner must take the answer. He cannot introduce other evidence to contradict the witness if it is collateral, and here Mr. Foreman is attempting to be more remote without even asking the witness about the matter he is attempting to introduce documents or inquire about documents purely collateral, and if there is any falsity in them, it deals with matters not about this case. If the man named in the documents were not George Parr, and the statement he had made a false statement about Joe Smith, he wouldn't contend it was admissible, but the man named is George Parr but the incident has nothing whatever to do with this case, so we contend that such evidence as relating to the credibility or veracity of this witness is clearly not admissible. Impeachment must relate to inconsistent statements, must relate to matters at issue in this trial, and I can give you the law.

Mr. Foreman: He quoted the Michaelson case as his authority, and I quote the eleven times, at least I count to nine and remember two more. The Michaelson case is no more in point than the Grunewald case was on what Mr. Bottler argued. The Michaelson case has noth-

ing to do with impeachment. It has to do with character testimony and reputation of a time and of a witness, and this has to do with his credibility and that is the big issue in this case and the one thing the jury has to pass on before they can convict a single one of these defendants, I think, and anything they would show on the credibility of that witness as distinguished from his character and reputation—we are familiar with the Michaelson case and it was written by the man he said, and that is the only thing that holds so far as his argument is concerned.

We were with him on the brief, Your Honor. We want the Court to be correct and know the Court will follow the law if it is given to him. In order to prepare our brief, we would need the statements themselves because the cases will turn on the similarity of the statements in the cases and of course if this Court tells me not to do something, I'm not going to do it. I would be foolish to do it, but I see no harm, for the purpose of tracking the law and giving it to the Court and for the convenience in the Court, of our having even the G-11, I believe it is, for that purpose, and we respectfully request it for that purpose in order that we may be on equal grounds with the Government, who has seen the statements, otherwise we would be buying a pig in a poke.

The Court: Doesn't Mr. Wilkey—doesn't the Jencks case say something to the effect that this is not a matter for the Court to pass on and is for the defendant?

Mr. Foreman: That is for the Government, Your Honor, but it doesn't say whether he will or not.

Mr. Wilkey: The Jencks case says it must be shown to relate to the testimony. At the request of the defen-

dant, these were submitted to the Court to determine whether they related to the testimony.

The Court: Isn't there something to the effect that it is not for the Court—

Mr. Foreman: Do you want that sentence read?

Mr. Wilkey: There is, but there is another provision also.

Mr. Foreman: "The burden of the Government's, not to be shifted to the trial judge, to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of State secrets and other confidential information in the Government's possession." It couldn't bring any harm to the Government in this case. However the Court rules, as far as the Government's case is concerned—if the Court tells us not to ask anything about it, we would be foolish to do it. We would wind up in jail, therefore we can't hurt the Government. I don't know why the Government is so assiduously and defending this particular man. He is not charged with being anything but what he is.

Mr. Wilkey: We are defending, not only him, but judicial conduct because this is a precedent-setting case and we don't wish to relinquish any of the rights the Government has enjoyed unquestioned since 1789, I suppose, in the handling of evidence of this type.

Mr. Foreman: May it please the Court, we contend, and in the language of the Jencks case, that these affi-

davits relate to this case because they were incident to the investigation which related to the indictment here.

Mr. Wilkey: That is not accurate on the face because the FBI was not concerned with the investigation of this case.

The Court: Just a minute. I want to read something now. "Relevancy and materiality"—I am reading from the Jencks case. "Relevancy and materiality for the purpose of production and inspection with a view to use on cross examination are established when the reports are shown to relate to the testimony of the witness. Only after inspection of the reports by the accused must the trial judge determine admissibility."

Mr. Foreman: They do give us the right to the inspection.

Mr. Bottler: Absolutely not, Your Honor.

Mr. Foreman: I am sorry. That is the Grunewald case.

The Court: I must order against conversation between counsel. Remarks will be addressed only to the Court. Counsel knows that, and I don't want to have to take time to give that instruction again.

Mr. Bottler: Yes, Your Honor.

The Court: Then it says: "—that is evidently questions of inconsistency, materiality and relevancy of the contents and the method to be employed for the elimi-

nation of parts immaterial or irrelevant. See Gordon vs the United States."

Well, without looking at the Gordon case, the Court can and should, for reasons of inconsistency, materiality and relevancy, eliminate parts immaterial and irrelevant, and believing that that is my power and duty, I am going to eliminate parts deemed by me to be immaterial and irrelevant, and for that reason I will not make available to the defendants Government's Tender No. 11. I will make available Government's Tender No. 12 with instructions that any cross examination of the witness Diego Heras concerning matters stated herein will be limited to his statement that he had previously given a false statement under oath. Government's Tender No. 12 will be delivered to defense counsel.

Mr. Foreman: May we have time to examine it before proceeding, Your Honor?

The Court: Yes, sir.

Mr. Foreman: May we have the record make available—I don't mean for us to see, but so that a review might be made in the event a review is necessary of Government's Tender No. 11, so that the record will be complete will it be made a part of the record?

The Court: It will be available. Is Mr. Burton still in the courtroom?

I am going to return to you, Mr. Burton, for your files, Government's Tender No. 11. If it is determined we need it for any purpose, you will again furnish it to this Court, will you not?

Mr. George Burton: Yes, sir.

Mr. Wilkey: Your Honor, may I make a suggestion?

The Court: I return it to Mr. Burton for safekeeping.

Mr. Wilkey: I feel, since the matter has been refused by the Court and has been marked and we will have a photostat copy of the original, Government's Tender No. 11 should be retained by the Court.

The Court: Very well, it will be. Thank you, Mr. Burton.

Mr. Wilkey: Your Honor, I want the Clerk to mark these four pages here as Government's Tenders 13, 14, 15 and 16.

(So marked by the Clerk.)

Mr. Wilkey: Your Honor, I have here four sheets which have been marked Government's Tenders, 13, 14, 15 and 16, which are reports of interviews, the first three reports of interviews with Diego Heras, the last, Government's Tender No. 16, is a short statement by Diego Heras. Those matters do not, in my opinion, relate to anything the witness has testified about in this case, or would be likely to be called upon to testify. For that reason I did not discover their existence until yesterday evening after the Court adjourned. That had been some months or maybe a year or more ago and had been placed by me aside from the preparation of this case, because I did not feel they related to this case, but in the letter

of the Jencks decision and my discovery of them, even though I don't feel they relate to his testimony, I feel obliged to deliver them to the defendant for his inspection.

The Court: I suggest they be identified and handed to the defense counsel at this time.

Mr. Wilkey: Government's Tender No. 13, an interview with Diego Heras at Alice, Texas, February 11, 1954, prepared by Post Office Inspector Roy H. Cauley and W. D. Main.

Government's Tender 14 is an unsigned, typewritten page of inscription at the top Diego Heras says: Date 2-10-54, 4:00 p.m. My understanding is it was prepared by one of the post office inspectors, either Inspector Main or Cauley.

Government's Tender No. 15 is an interview with Diego Heras, February 11, 1954, signed by W. D. Main, post office inspector.

Government's Tender 16 is a six-line handwritten statement by Diego Heras dated August 11, 1955.

I tender these instruments for inspection and examination to the defense.

The Court: Are we ready to proceed with the cross examination of Diego Heras?

Mr. Foreman: There is one of these I haven't read yet, Your Honor.

The Court: Very well. Let me make this suggestion. We have only a limited time this morning. Certainly you shall use up the balance of this morning with your cross

examination of the witness concerning matters which he testified to on direct, and I doubt if you will exhaust all of the many volumes of statements which were delivered to you yesterday in today's examination, and then you would have the week end to read these that were given to you this morning.

Mr. Foreman: That is perfectly all right, Your Honor.

The Court: Very well. I suggest the jury be recalled and we proceed with cross examination.

(The following proceedings were held in the presence and hearing of the jury.)

10-2296 DIEGO HERAS,

being the witness who was on the stand at the time Court recessed on June 6, 1957, resumed the stand at this time and continued his testimony as follows:

10-2297 CROSS EXAMINATION

Q. (By Mr. Foreman) You say your name is Diego Heras?

A. Yes.

Q. What other names do you have?

A. None.

Q. Are you sometimes, among your intimates, called "Daddy-O"?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Are you sometimes, among your associated, called "El Borracho"?

A. No, sir.

Q. Not at all?

A. Not at all.

Q. Mr. Heras, who was the last woman you said that you wrote checks for? I believe substituting for somebody named—what was it—Maria—was that the first name, and you said later you wrote some checks for somebody else? What were those two women's names?

A. The first one was Maria Gila Rodriguez and the second name was Matilde Garza.

Q. Over how long a period of time did you write checks in the name of Matilde Garza?

A. I don't recall, but it seems to me it was about five or six months.

Q. Five or six months?

A. Yes.

Q. And each of those checks was for how much, sir?

A. I believe they were in the neighborhood of $50 or $60.

Q. And you turned them over to D. C. Chapa?

A. Yes, sir.

Q. Then would that have been the last five or six months you were there, or was there added some other names you claim to have written checks for and turned over to Chapa? About when was it, those six months you wrote those?

A. My best recollection was it was either around the latter part of 1950 and part of 1951.

Q. If it was the latter part of 1950 and the first of 1951, those checks would have appeared, if they were truthfully made by you as you say, in the annual report ending August 31, 1951, wouldn't they?

A. I think so.

Q. Without taking the time now to do it, but asking you to do it at the recess so as to save as much time as possible, I hand you Government's Exhibit 2, ending August 31, 1951, and—you are familiar with this, could trace these out in just a minute, couldn't you?

A. I will try.

Q. Will you at recess try to find and identify those six or eight checks that you wrote?

A. Yes, sir.

Q. Thank you. Now, with reference to Government's Exhibit 17, —I want that series of 17-A to P. I picked those up by mistake.

Mr. Wilkey: Mr. Heras, I think he wants you to do that at the recess.

Q. (By Mr. Foreman) I believe you have—this is Government's Exhibit 17-A through P. This is a series of checks. There is more here besides. 18, 19, 20 and 21 are here also. A through P are the alleged spurious checks that you signed, and who endorsed them? You endorsed them?

A. Yes, sir.

You countersigned them?

A. Mr. George B. Parr countersigned them.

Q. You are sure you endorsed those? You don't have any doubt about that?

A. Yes.

Q. All endorsed by you?

A. Yes.

Q. Thank you. Now, would you please, sir, and I would like you to do this in the presence of the jury.

if you will, I have typed here, and on white paper, a list of each of those names, and I am asking you to write each of these names on this—each of these lines six times, if you don't mind. I will get you a chair and a pen and let you sit right here.

Mr. Wilkey: Do you want him to do it with pen or pencil?

Mr. Foreman: I want him to do it the way those checks are endorsed. They are endorsed in pen. Do you have a pen?

A. No, I don't have a pen.

Q. Now, each of the names as they appear, six times on each line.

(A period of 15 minutes was consumed by the witness in complying with counsel's request.)

Thank you, Mr. Heras.

(Documents tendered to the Clerk and marked Defendant's Exhibits 207-A, B and C.)

Mr. Heras, tell me whether or not you were present and assisted in the moving of the books from San Diego, the offices of Mr. W. E. Benson, the accountant, to the Benavides Independent School District offices on July 12, 1951?

A. I don't recall that I was there present, Mr. Foreman. I don't think I was. In fact, I am more inclined to believe that I was not present then.

Q. Well, do you know one way or the other?

A. I think I was not present there when the books were removed.

Q. You cannot say for sure?

A. I couldn't very well say for sure, but I have reasons to believe I was not there that afternoon.

Q. Well, whether you were there or not, did you assist in moving them?

A. No, sir.

Q. Specifically, did you help move five truck loads?

A. No, sir.

Q. You did not point out anything to be moved, and did not load or transport from San Diego to Benavides?

A. No, sir.

Q. And you did not come back some six weeks later and take another half a truck load somewhere else?

A. No, sir.

Q. And did you take another half a truck load to the Benavides Independent School District school offices?

A. No, sir.

Q. You just didn't have anything to do with the loading and moving?

A. That is right.

Q. Well, please tell us, Mr. Heras, exactly, without omitting a single detail, as to who did what or who said what or what was said about the first instance when any fraudulent, spurious, or fictitious checks were written on any account of the Benavides Independent School District by you or with your knowledge. Fix the time first. I believe you said in 1948. When in 1948?

A. I believe it was in the latter part of 1948 or the early part of 1949, to the best of my recollection.

Q. Now, didn't you testify in response to questions by Mr. Wilkey that it was the first part of 1948?

A. I don't recall. It was either in '48 or '49.

Q. Well, as to the time of year of 1948 is what I have reference to. Do you recall whether or not you told this jury—

A. No, I don't recall exactly, but I believe it was the latter part of 1948.

Q. At any rate, it happened at what place?

A. It happened in the—in our offices in the Parr Building.

Q. "Our office" means the Willie Benson auditing office in the south end—

A. I am referring to the space I identified as "General Office," on the south portion of the building.

Q. That is right. Go ahead. Now, what time of day, what day of the week was it? I believe you stated you can't fix the month?

A. No, I don't think I could even attempt to fix the month, or year, or day, or day of the week that it happened.

Q. Well, do you recall what did happen?

A. Yes, sir.

Q. Tell us as explicitly and simply as you can.

A. I was directed to make some checks from—

Q. First, say where you were. Were you standing up, sitting down, and if so in what place?

A. I don't remember whether I was sitting down or standing up.

Q. Who directed you? Who was there?

A. The first instance was, I believe Mr. Benson was there.

Q. Only Mr. Benson?

A. Yes.

Q. That is Willie Benson or Willie E. Benson or Willie M. Benson?

A. William M. Benson.

Q. You and he in the office alone?

A. Yes. I was given that list of names, and I don't know whether he walked out or what he did, but I went on ahead and wrote the checks.

Q. Had any discussion of any kind preceded that, to your knowledge, between you and anybody or Benson and anybody, I mean by that as to anything you heard or saw?

A. Yes, I heard a little conversation.

Q. What conversation did you hear between whom?

A. I didn't exactly hear the conversation. I heard Mr. Parr ask Mr. Benson into his room and—

Q. You heard Mr. Parr ask Mr. Benson to come to Mr. Parr's room?

A. Yes, sir.

Q. You mean by that his office?

A. Yes.

Q. On the northwest corner of the building?

A. Yes, and I don't recall what happened immediately after that, but all I can remember is that I was given a list of names on a piece of paper for me to write out checks.

Q. Did you hear him holler it? Did he come to the door and call him? Did he telephone him, or how did he get him?

A. We were there in the office, all three of us. We were talking. I don't know what was the subject of the conversation but all of a sudden Mr. Parr motioned Mr. Benson to his room.

Q. Mr. Parr was in the south school office of the Benson offices?

A. Yes.

Q. And you were talking about something, and Parr left and motioned Benson to follow him?

A. Yes.

Q. Do you recall a single thing Parr said before he left?

A. No, sir.

Q. You wouldn't have any idea what there were going into the office for?

A. No. I was then given that piece of paper with names, and I don't recall who handed me that paper at that time, whether Mr. Parr or Mr. Benson.

Q. You speak of that paper. Is it some paper in evidence here you speak of? When you nod your head and say you speak of some paper?

A. I was indicating some size of paper, kind of paper, either scratch-pad paper or letterhead that the names were written on.

Q. Have you seen that paper you are speaking about at any time since the prosecution of this case started?

A. No, sir, I have not.

Q. Describe it then.

A. Well, it was an ordinary—as I recall, ordinary scratch-pad paper or letterhead that the names were written on.

Q. And was anyone present when it was handed to you except W. E. Benson?

A. I don't recall that anybody else was present at that time.

Q. George Parr was not present?

A. He was—

Q. I mean he was not present when the paper was handed to you?

A. I don't recall whether he handed me the paper or Mr. Benson. I don't recall offhand just exactly who handed me the paper. I know subsequent times—

Q. Let's just stay on that time, please, sir, and what was said when the paper was handed you by whomever you don't know?

A. I was directed to make out the checks, which I did.

Q. Who directed you to do that?

A. I don't recall whether Mr. Benson or Mr. Parr at that time.

Q. Well, have you previously, under oath, testified it was Benson and not Parr that told you the first time?

A. I don't recall that I have. I know that I have been—tried to be consistent in answering. I don't remember exactly whether Mr. Benson or Mr. Parr handed me the first time the paper, for the fir[illegible] time.

Q. Mr. Heras, you do not mean by that you are more concerned with being consistent than with being correct, do you?

A. All I can say is that I say what I can remember best.

The Court: Gentlemen, I am going to suggest a recess at this time. Court will recess for 20 minutes.

(Short recess.)

The Court: You may continue.

Mr. Foreman: What is that last question, little lady, please?

The Official Reporter (Reading): "Question: Mr. Heras,

you do not mean by that you are more concerned with being consistent than with being correct, do you?

"Answer: All I can say is that I say what I can remember best."

Q. (By Mr. Foreman) Do you know who was present when the list was handed you in the office of the School District at the south end of the building?

A. Yes, sir.

Q. Who?

A. I recall there was only three persons there, Mr. Parr, Mr. Benson and myself.

Q. Do you recall whether it was during business hours, noon recess, afternoon, a holiday, or what?

A. As I remember, it was in the morning.

Q. Do you recall whether or not others who would normally be there, why they weren't there?

A. I don't know why they weren't there.

Q. At any rate, nobody saw it but you and Benson and Mr. Parr, who was there?

A. Yes, sir.

Q. And what was said as this first list was handed you, and who said it?

A. I don't recall exactly who handed it to me, either Mr. Benson or Mr. Parr, but I was given the list and told to go ahead and make out the checks.

Q. Well, did Benson know they were spurious checks?

A. I don't know.

Mr. Wilkey: That calls for a conclusion. He has answered he didn't know. That calls for a conclusion.

Q. (By Mr. Foreman) Did you ever answer that "Benson knew they were spurious checks," on not one but many occasions?

A. I don't believe I have.

Q. You never made an affidavit to that effect?

A. I don't believe so.

Q. Do you know so?

A. I don't know.

Q. Specifically, did you or not on March 18, 1953, before a notary public, Donato Serna, in Benavides, Texas, make such an affidavit?

A. I made an affidavit sometime in March of 1953, but I can't recall the contents or any specific paragraph of it.

Q. I am not asking for a specific paragraph, but I am asking for an ultimate fact as to whether or not anything occurred on that occasion that caused you to know W. E. Benson knew that all of these checks that you have referred to on the first occasion were spurious, false, fraudulent, and fictitious?

A. I don't remember.

Q. Is it your best testimony, Mr. Heras, that this was the only time that you had any such dealings with W. E. Benson concerning fictitious, fraudulent, spurious, forged checks of the Benavides Independent School District on the Texas State Bank at Alice?

A. I didn't get that question, Mr. Foreman.

Q. I beg your pardon?

A. I didn't get that question clearly.

Q. Did you have any other occasions when William Marvin Benson gave you or you gave him spurious, fraudulent, fictitious checks which you had forged and either endorsed or hadn't endorsed, but nevertheless had written those spurious checks for nonexistent obligations of the Benavides Independent School District here and other occasions than the first time?

A. I don't recall, Mr. Foreman, other than the first list and there might have been subsequent times when

he signed the checks, you know, but I don't know that he knew they were fictitious checks or not.

Q. Well, did he on other occasions give you lists of people similar to the first occasion, of names aggregating into the thousands of dollars to whom you were to write checks for non-performed labor or contract work of materials, things not received? Did W. M. Benson do that on many other occasions or on any other occasions?

A. I would say that he did direct me to write some checks sometimes for reports given to him either by the school superintendent or Mr. Chapa, and I would make out the checks. In some of the cases, I know more or less that the work or the individual was not existent.

Mr. Foreman: May it please the Court, I move that that answer be stricken as not responsive. I did not ask him for his conclusion as to who gave, or his hearsay as to who gave anything. I submit he is attempting to defend Benson and prosecute other people, and I ask that the witness be directed to answer the question and not volunteer anything by way or argument against the innocence of my clients or in behalf of the innocence of W. M. Benson.

Mr. Wilkey: Your Honor, I think that that objection is not well taken and is improper argument to the jury. The question related to any other occasions when lists of checks with contained fictitious materials were presented to him by Benson, and I believe that that is what he was testifying about.

Mr. Foreman: The answer was yes or no, sir, and I would then like to proceed.

The Court: I want to return to the question and the answer. Will you read the question and answer please?

The Official Reporter (Reading): "Question: Well, did he on other occasions give you lists of people similar to the first occasion, of names aggregating into the thousands of dollars to whom you were to write checks for non-performed labor or contract work of materials, things not received? Did W. M. Benson do that on many other occasions or on any other occasions?

"Answer: I would say that he did direct me to write some checks sometimes for reports given to him either by the school superintendent or Mr. Chapa, and I would make out the checks. In some of the cases, I knew more or less that the work or the individual was not existent."

The Court: It is a compound question, and I will instruct the jury not to consider the question or the answer. The question and answer is stricken, and I suggest you rephrase your questions one at a time, please.

Q. (By Mr. Foreman) Besides the first time, did W. M. Benson give you other lists of names on papers for you to write checks?

A. Yes, sir.

Q. On many or few?

A. Many.

Q. And were those—would you say how many during the years '49, '50 and the first half of '51?

A. I don't have any idea.

Q. Could it have been hundreds?

A. No, I dont believe so.

Q. Could it have been as many as one hundred?

A. No.

Q. You are the only one who would know, and your best judgment is all you could give us.

A. Yes, sir. I don't know how many times. I can't guess.

Q. So many that you can't recall?

A. No, there were not too many, but I know there were not a hundred.

Q. About how often during the course of a month did W. M. Benson give you a list of names from which you were to write checks?

Mr. Wilkey: Your Honor, may I have it made clear whether he is asking for lists of checks of any kind, or lists of fictitious checks, or just what lists of checks he is asking about?

The Court: I will say to the witness, if the question is not clear the witness should say it isn't. To the matters objected to, counsel may develop that on redirect examination.

Mr. Wilkey: I can't intelligently either object or not object to the question unless I understand what they are leading to, Your Honor.

The Court: I don't think we will know what they are leading to until we hear the answer.

Mr. Wilkey: I can't tell unless I understand the question too. I am not as astute as some people, but I think I have a right to understand the question so I can either object or not object to it.

The Court: Rephrase.

Mr. Foreman: When I offer Mr. Wilkey as a witness, I intend to make my questions simple enough for him to understand. Right now I don't intend for him to understand until I have developed what I propose from this witness.

The Court: Very well. You may continue.

Q. (By Mr. Foreman) Mr. Heras, would you tell us about how often, Mr. Heras—I mean, would you tell us about how often Mr. W. M. Benson would give you a list of names and amounts for which you were to write checks?

A. Mr. Foreman, all kinds of checks or any kind of checks?

Q. Just the way I ask it, lists of names with the amounts on there. He is not the witness, just you. Just tell us your answer to the question, please, sir, as best you can. I will ask other questions and he will have the right to take you back on redirect examination.

Mr. Wilkey: I think the witness has indicated he does not understand what the question calls for.

The Court: I will direct the witness not to answer anything he cannot understand.

Mr. Foreman: Let me ask it again.

Will you tell us, please, how often Mr. W. M. Benson would give you lists of names with names of people and amounts on them for you to, and direct you to, write checks on the Benavides Independent School District payable to those people on that list in that amount? Do you understand that?

A. Yes.

Q. Good.

A. That was once a month.

Q. Any oftener?

A. I don't believe so.

Q. Now, did you ever give fraudulent, spurious, fictitious checks, that is, checks issued to people who didn't exist, to W. M. Benson to go to the bank and cash?

A. I don't believe I ever gave Mr. Benson any checks to go to the bank and cash.

Q. Well, did he ever go to the bank and cash any of the checks that you gave him, the spurious, fraudulent, fictitious checks, such as you see here, 17-A through P?

Mr. Bottler: That calls for a conclusion unless it is limited to his knowledge.

Mr. Foreman: I only want him to testify to what he does know. Do you know or not?

A. No, I do not.

Q. Do you know that he didn't do so?

A. I don't know.

Q. Did you ever give anyone any of those checks to take to the bank and cash? Did anyone ever take such checks to the bank with your knowledge, except yourself?

A. Yes, there was other persons other than myself that would take the checks to the bank.

Q. Who were they?

A. Not more than one. Sometimes I would hand those checks to Mr. Parr and he would take them himself.

Q. You say one time, or you say that he did that several times?

A. I think that was done several times.

Q. All right, and anyone else?

A. Not to my knowledge.

Q. You have told us, Mr. Heras, about the only people that you ever gave any of the money to that you got on those fraudulent checks that you wrote, endorsed, and cashed? Have you told us the only people that you ever left the money with? I think you told us you gave it to George B. Parr one time, to W. M. Benson, and one time to D. C. Chapa.

A. I believe those are all the people I gave the money to.

Q. You never gave the money at any time from the fraudulent, fictitious checks to anyone else except W. M. Benson, D. C. Chapa, and George B. Parr?

A. Yes, sir.

Q. Did W. M. Benson countersign each one of those fraudulent, fictitious and spurious checks you testified about receiving throughout 1949 and part of 1948, 1950, and a half of 1951?

A. I believe so.

Q. And did he ever have a supporting invoice on any one of these spurious, fraudulent and fictitious checks?

A. No, sir.

Q. You didn't make—then he signed them without asking what they were for or who this party is, or what did he do?

A. I don't believe he ever made a supporting claim or bill.

Q. At any rate, you didn't make any?

A. I didn't make any.

Q. You didn't forge one or fix one up, or put somebody's name so as to have it in the bills paid file?

A. No, sir, I did not.

Q. Then there wasn't anything at all of record either on the double entry system of bookkeeping or in the bills

paid-file to justify those vouchers that were spurious, fraudulent, and fictitious, throughout 1949 and '50, and part of '48 and the first half of '51?

A. Mr. Foreman, there were—all checks were accounted for in the book of original entry, which we call the double entry book. They were accounted for in that book.

Q. Accounted for by writing in that book whatever was on this piece of paper either Mr. Benson or Mr. Parr gave you?

A. I would enter the name, the check number and amount. That was done from the copy of the check and not from the list that was handed me.

Q. But the only thing you had to support the check was the check itself, because the information was completely from the check, is that correct, sir?

A. Yes.

Q. All right. Now, the places that you testified that you had given money to George B. Parr was at his office and at his home?

A. Yes.

Q. Did you testify that you gave that money to him at any other place?

A. I believe one—I believe I testified it was at the bank one time and another time at either his stables where he kept his horses, but I don't know of any other place.

Q. Never did. You don't recall?

A. I don't recall, offhand.

Mr. Bottler: What was the last word?

A. Offhand.

Q. Is it then your testimony those are the only places you ever gave him money?

A. To the best of my recollection, yes.

Q. Did anyone ever see you give him that money?

A. No, I don't know of anybody being nearby when I handed him the money.

Q. When Assistant Attorney General Sam Ratliff and District Attorney Sam Burris were interviewing you in Room 121 of the Texas State Hotel at 2:05 p.m., May 29, 1956, and asked you the same question I just asked you, did you agree to testify that you had delivered some of that mony in a drug store so you could find somebody who saw you give the money to George Parr?

A. I recall one instance, but like I said before, I am not saying definitely that those are the two other places.

Mr. Foreman: May it please the Court, I would like to have my question answered. He is either confused or evading the question. My question is, did he make that agreement, not about the drug store, but did he make that agreement. I would like that to be answered.

The Court: You will answer that part of the question.

Q. Will you answer the question like I asked it?

Mr. Wilkey: We ask that the same question be read back.

The Court: I will permit counsel to ask another question and the previous question will be stricken.

Q. (By Mr. Foreman) Please, just no conversation, and just the question.

Tell us, it has to do with whether you agreed to swear to a lie, a fictitious statement, in order to convict George Parr?

A. No, I did not.

Q. I want to ask the question. I want to ask you if starting at 2:05 p.m., on May 29 in 1956, last year, here in Houston within two blocks of where you are now, did you, in conversation with prosecuting attorney, District Attorney Sam H. Burris of the 79th District, and Sam Ratliff, then Assistant Attorney General of the State of Texas, when they asked you about finding somebody or whoever saw you deliver money to George Parr, did you then and there state that you were willing to testify that you delivered it to him in a drug store for the purpose of enabling somebody to corroborate you as an accomplice witness? Did you make that agreement or suggest to those two lawyers here in Houston last May 29 a year ago?

A. No, sir. I want—

Q. All right.

Mr. Wilkey: He hasn't finished his statement.

Q. (By Mr. Foreman) Go ahead and finish.

A. I didn't not make an agreement to any falsehood. I do recall now there was one time I delivered the money in a drug store in San Diego, Texas, but he happened to be there and I happened to have the money with me for him, and I turned around and he patted me on the back, and I saw who he was and handed him the money. That is my best recollection.

Q. You didn't recall that when you were testifying yesterday or the day before when you said that the only places that you delivered the money was the stables, the bank, the home, and the office? You didn't remember the drug store, did you?

A. I don't remember restricting my statement to those places because I think I have testified before that I have delivered some money at the drug store.

Q. Just before the Hinojosa Drug Store was mentioned in this recorded interview between you and Sam Burris and Sam Ratliff, had those two prosecuting attorneys emphasized to you the importance of finding somebody who would testify that they had seen you deliver the money to George Parr?

A. I don't remember having been told the importance of getting someone to corroborate the story. All I can remember is the mentioning of different places where I had delivered the money, but not the importance of having anyone corroborate my story.

Q. They didn't explain to you that they were trying to find somebody that had seen you?

A. I don't recall that they did.

Q. All right. Then what is the name of Hinojosa's Drug Store?

A. It was the Modern Pharmacy before. I don't know whether the name has been changed or not, but it was the Modern Pharmacy many years ago.

Q. You think the one time you have testified about with the trip to the Cash Store with D. C. Chapa, is that the only time you gave the money to D. C. Chapa, or any money which you say was the proceeds of the fraudulent, fictitious and spurious checks?

A. I don't recall. There might have been some other time, but that one time, I remember about that one time very distinctly.

Q. Well, try to recall for us if there was any other time, Mr. Heras?

A. I don't remember any other time, Mr. Foreman. I meant cash or checks. Did you mean cash or checks?

Q. I mean—well, did you ever give D. C. Chapa any of the spurious, fraudulent, fictitious checks such as 17-A through P?

A. No, I don't believe I did give him checks.

Q. All right. Then I mean cash. Did you on any other occasion than the first—

Mr. Wilkey: I don't think he finished his answer to that last question. He just started to say something else about the checks.

Q. Did you finish your answer?

A. I mean—I want to make myself clear that I did deliver him some cash on one or perhaps more times, but I did deliver him some checks which I knew were fictitious.

Q. Now, you have told us about some checks for services not rendered?

A. Yes, sir.

Q. Is that the checks you have reference to?

A. Yes, sir.

Q. Mr. Heras, I intend to go into that, but I didn't include it in this question. My question originally when you threw in the check and asked did I mean cash or checks, my question is, did you ever on any more than the one occasion you testified about, going to the Cash Store in Benavides with D. C. Chapa, give him the proceeds from, which to me would mean cash, of any of the fraudulent, spurious or fictitious checks? Will you answer that question?

A. I don't know of any other time I delivered him cash. I can't think of any other time, I don't believe.

Q. Then you and D. C. Chapa never went anywhere except on the one occasion with any of the proceeds or the cash from the spurious checks, did you?

A. Not to my knowledge.

Q. And that was just as you testified, to Mr. and Mrs.

Yzaguerre, the Cash Store, a grocery store in Benavides, Texas?

A. Yes.

Q. And what time of the year was it?

A. I don't recall exactly, but I think it was the latter part of the year, the last quarter, I believe.

Q. All right, sir. School was in session?

A. Yes, I believe so.

Q. Was it at Thanksgiving time, or before or after?

A. I don't remember exactly whether it was before or after Thanksgiving.

Q. Was it in November?

A. I don't recall, Mr. Foreman. It was the latter part of the year, as best I recall, but as to the specific day, week or month, I don't know.

Q. Well, will you tell us whether or not it was cold or warm?

A. I don't believe—it was cold.

Q. You believe it was cold or not?

A. It was cold.

Q. How were you dressed?

A. I don't remember what I had one.

Q. How was Mr. Chapa dressed?

A. I don't remember how he was dressed that day.

Q. Did he have on a coat?

A. I don't remember whether he had on a coat.

Q. Have you ever remembered whether he had a coat on when you were testifyng under oath as to what happened on this day?

A. I don't know whether he had a coat on or not.

Q. I am going to ask that same question that at New Braunfels you testified on a coat.

A. Small details like that, I don't remember. He might have had on a coat, but I don't remember. I don't believe he had a coat on. I don't think it was cold even though it was the latter part of the year, but I don't think he had on a coat.

Q. Then he did not put the envelope or the money you gave him in his coat pocket, did he?

A. I don't know, Mr. Foreman, whether it was a coat pocket or a shirt pocket, or just how he was dressed.

Q. Well, haven't you testified under oath both ways, one time he put it in his coat pocket and another time he put it in his shirt pocket?

A. I don't recall the answers I gave to those questions.

Q. Go ahead, sir.

A. I know that the money was in his pocket, but I don't know whether it was a coat pocket or a shirt pocket.

Q. As a matter of fact, it was his right rear hip pocket?

A. I don't know where it was.

Q. Do you know what pocket it was in?

A. I believe it was a front pocket, either a shirt or coat pocket.

Q. Either a coat or shirt pocket?

A. Yes, sir.

Q. By front pocket, what do you mean if it was a coat pocket?

A. I don't believe he had a—he had the money in a wide pocket of a coat.

Q. Did you say you don't believe he did or not?

A. I don't believe he had the money in the side pocket of the coat.

Q. Did he have it in his inside pocket of the coat, or where you wear a handkerchief?

A. He had it visible either in the shirt pocket or the

coat pocket. It was visible. I could see it, but I don't know whether it was the inside pocket of his coat or shirt pocket.

Q. If it was visible and on the inside pocket of his coat, he was wearing a transparent coat, at least where that pocket was?

A. Not necessarily. He could have the money visible in his pocket without it being a transparent pocket.

Q. You mean the bulge? You could see the bulk of it protruding through the coat?

A. Yes, or his shirt pocket, but again I don't recall whether he had a coat on or not.

Q. How many bills, how much was the total amount of the currency you gave him on the occasion you saw it, if you saw it in his coat pocket or shirt pocket, if you saw it there?

A. I don't recall, but it was a small amount, either $2500 or $3000.

Q. Just a mere bagatelle. What type bills was it, Mr. Heras, was it 5's, 100's—

A. I don't recall, but I am inclined to believe they were $100 bills.

Q. Were they rolled up with a band around them, or extended as they are kept in banks, in bundles?

A. I think they were folded one way in an envelope.

Q. I see. Then there were approximately 25 of them and they had been folded over one time, and they extended considerably through the coat or shirt?

A. Not considerably, but I am pretty sure they made a bulge.

Q. Do you recall that they did, or you assume that from the fact that there was $2500 worth of $100 bills?

A. I don't know, Mr. Foreman.

Q. You don't remember seeing the bulge of them at all, do you?

A. Yes, I do.

Q. All right. Then you were seen and talked with on that trip by Mr. and Mrs. Yzaguerre, both?

A. I don't know whether she was in the store or not, but Mr. Yzaguerre came out.

Q. Who did?

A. The storekeeper.

Q. That is Abel?

A. Yes.

Q. And he came out and talked with the both of you?

A. He greeted both of us, and they started talking about the account, and—

Q. Who started talking about accounts?

A. Mr. Chapa and Mr. Yzaguerre. I think the question—there were two or three questions that Mr. Chapa asked Mr. Yzaguerre.

Q. Please tell us what they were so as to help Mr. Yzaguerre remember this.

The Court: I want to interrupt at this time. One of the alternate jurors appears to be asleep. Are you sleeping?

Alternate Juror: What is that?

The Court: Johnson, were you sleeping?

Alternate Juror: No, sir.

The Court: You appeared to be asleep, and we wanted the juror to pay attention to the testimony.

You may continue.

Q. (By Mr. Foreman) Please tell us exactly what was

said in the—by the way, could we fix this year while we are on this point?

A. I believe it was the latter part of 1950.

Q. It was the fall of the preceding year to your leaving the Benavides Independent School District? It was the last year you were at San Diego, the last full year?

A. Yes, sir.

Q. That would necessarily have been 1950?

A. Yes.

Q. And your best recollection is that is was in the latter part of the year, and you were in what car at this point at the Cash Grocery Store?

A. Mr. Foreman, I don't remember. I don't recall whether he was driving his car or driving my car. I am inclined to believe we were driving his car because he was doing the driving.

Q. All right. And was it morning or afternoon?

A. I believe it was in the afternoon.

Q. Late?

A. Yes, I think it was late in the afternoon.

Q. About four or five o'clock?

A. Yes, it must have been four or five o'clock.

Q. How did Mr. Yzaguerre—did he come outside, or did you all go inside?

A. He came outside.

Q. Did you all blow your horn, or could he see you?

A. Yes, sir.

Q. You blew the horn?

A. Yes.

Q. Is that a drive-in grocery?

A. Yes.

Q. And he came out and remained talking with you and Mr. D. C. Chapa for approximately how long?

A. It wasn't very long, Mr. Foreman, I don't believe. I could not estimate the duration of the conference, whether 15 or 20 minutes, or 30 minutes, but it was not too long.

Q. You said 15 or 20 minutes or 30 minutes?

A. Yes, it wasn't very long.

Q. By the duration of the conference, you mean that is how long you talked?

A. Yes.

Q. All right. What did you talk about?

A. I don't remember exactly what the conversation was before Mr. Chapa asked him for the bills.

Q. What bills did he ask him for?

A. If he had—the best I can remember, he just wanted to see the account.

Q. Whose account, his own account or the Benavides Independent School District?

A. I believe so. I don't know, but I have reason to believe Mr. Yzaguerre knew what he meant.

Q. Did you have reason to believe from anything he said Mr. Yzaguerre would have known what he meant? What did he say?

A. He said, "I want to see the account," and I don't remember specifically whether he said his personal account or the School District account, or any other account.

Q. Did he use the singular or plural, account or accounts?

A. I believe he said account.

Q. What did Mr. Yzaguerre do then?

A. He walked back into the store and brought back a number of bills.

Q. Now—and then what happened?

A. Mr. Chapa paid them, paid the bills.

Q. How much were they?

A. I don't recall, but it was a little in excess of $200.

Q. You have testified—everything you have testified to here about that trip, the last time you were up here, last November, when you were called as a witness, you testified to that trip to Yzaguerre's and this transaction like you say it happened here. You told another jury that, didn't you?

A. Yes, sir, I believe I did.

Q. That same Abel Yzaguerre and his wife were up here before this case started, weren't they, this time?

A. Yes, I believe I saw them in the hall one day.

Q. And you saw the District Attorney talk to them, didn't you?

A. No, I did not see the District Attorney talk to them.

Q. You saw them excused and sent home, didn't you?

A. I don't know, Mr. Foreman.

Q. You have seen them here since witnesses were sworn in?

A. I have not seen them.

Q. Now, Mr. Heras, the first few questions you were asked was about the simple life you led as a husband and father, and in a little modest home down there in Benavides. Tell this jury how many bank accounts you had in 1948, 1949, 1950, and where they were.

A. I had an account in the San Diego State Bank, and I had another similar account in the Texas State Bank, and I believe I had a little balance in the Merchants Exchange Bank.

Q. The Merchants Exchange Bank at Benavides?

A. Benavides.

Q. Those are the only accounts?

A. Those are the only banks I dealt with.

Q. You didn't have one in Nuevo Laredo, did you?

A. No, sir.

Q. Across the river in Mexico?

A. No, sir.

Q. Were you over there frequently?

A. No. I didn't go over there regularly.

Q. Mr. Heras, did you ever receive any of the proceeds of these fictitious, fraudulent or spurious checks?

A. No, sir.

Q. Not one red cent, did you?

A. No, sir.

Q. And you have always affirmed that under oath, that you had received no proceeds whatever, not even one red cent, haven't you?

A. No, sir.

Q. You have not always claimed that?

A. I believe I have given the same answer to the question.

Q. I am sorry. The negative was confusing. At any rate, your testimony now is that you have never received any gratuity, that is a gift, or a tip, or the porceeds of any kind from any of the checks that you cashed of these fraudulent, spurious or fictitious checks?

A. No, sir.

Q. And you went about your simple existence of modesty, as any other humble citizen of Benavides, living on your earnings, didn't you?

A. Yes, sir.

Q. And tell us please, sir, what they were for the year 1949, what income you had?

A. I had my salary check.

Q. How much?

A. I think it was $275.

Q. Starting in January, your salary was $275 in 1949?

A. I believe so, Mr. Foreman. I am not sure whether it was the beginning of 1949. I was getting $250 before, but I don't know what month it covers or when.

Q. In 1949, it would have been a salary of $275 a month?

A. Yes.

Q. What other emolument, consideration, expense chec, or however you want to call it, did you receive?

A. I received an expense check of $75 which was called traveling expense.

Q. That was traveling back and forth from Benavides to San Diego every day, wasn't it, five days a week?

A. Yes, sir.

Q. And your home was at all times, and has been at all times, until you left to come to Houston, the City of Benavides?

A. Yes.

Q. Some 16 or 19 miles from San Diego?

A. Approximately 15 or 16 miles.

Q. Did it take pretty nearly that $75 to buy gas and oil to use? Did you take that up pretty much?

A. Just about, yes, sir.

Q. And that is what you paid out for that, which it was given you for, gas and oil and the use of your car?

A. Yes, sir.

Q. So that $75 was used up on gas and oil leaving you back to $275. What else did you receive by way of salary or annual fees? First we will ask you about Thomas Y. Pickett. He paid you something, didn't he?

A. Yes.

Q. What did he pay you for doing?

A. For making out the tax rolls.

Q. That was for putting information from the renditions on this sort of thing (indicating), wasn't it?

A. Yes, sir.

Q. And you typed that yourself, didn't you?

A. Yes, sir.

Q. And it was part of his contract to do it, wasn't it?

A. As far as I know, it was one of the specifications in the contract that he was supposed to deliver the tax rolls to us.

Q. And to certify to the tax roll after it was done, wasn't it?

A. Yes.

Q. And he had a tax accountant, a Mr. Gordon Humphreys, who in the years—was Gordon Humphreys the tax accountant when you were making the tax rolls?

A. I don't remember. Mr. Gordon Humphreys was connected with the Thomas Y. Pickett organization late in 1951 or 1952. I don't remember, but I don't believe Gordon Humphreys was directly connected with the company in 1949.

Q. How long did you carry along the work of typing the tax roll from the renditions for Thomas Y. Pickett, for how many years, starting when and stopping when?

A. I don't recall the first time.

Q. About when? About how many years altogether? Ten years, 5 years, 15? It doesn't matter, Mr. Heras.

A. I don't recall exactly how many years, Mr. Foreman.

Q. Was it as long as five years, until the end of 1952?

A. I believe it was, yes.

Q. How much per year did you receive?

A. $200.

Q. That was to cover the entire year's work?

A. Yes.

Q. And what other income did you have—did you have any rent property, oil royalty, stocks and bonds, dividends of any kind? Did you have any other income other than the $275 a month and the $200 a year and your expense account, which of course you used up?

A. I had a little rental dividend.

Q. $14 a month?

A. Yes. Sometimes I was paid, sometimes I was not.

Q. Sir?

A. Sometimes I would get a dividend, sometimes not.

Q. When you got a dividend, it was $14 a month? When the place was vacant, you didn't get anything?

A. Yes.

Q. Would that average half the year being rented, or three-fourths of the year, or one-fourth of the year?

A. I can't say, but I got a dividend.

Q. Sir?

A. I didn't get the dividend regularly.

Q. Well, sir, this is for the purpose of your—

A. I didn't—pardon me.

Q. Go ahead.

A. I wouldn't say that I got the dividend of $14 every month for 12 months, because I did not.

Q. Would you estimate the number of months you did?

A. Oh, I don't think the number was over three or four.

Q. You would get about four times 14, or $56 a year, in addition to the $200 from Thomas Y. Pickett. That would be $256 a year and $275 a month?

A. Yes.

Q. What other income did you have?

A. I don't know of any other income.

Q. Then anything else—you didn't work for anybody—by the way, you didn't work for anybody else but the Thomas Y. Pickett and the Benavides Independent School District?

A. Yes, sir.

Q. Who else did you work for besides them? Those were the only ones who you worked for?

A. Those were the only ones I worked for.

Q. Then—how did you—did you always deposit your salary check, or did you cash it?

A. Sometimes I would deposit it and sometimes I would cash the check.

Q. Now, did anybody die and leave you any property, or cash any insurance policies in 1948, 1949 or 1950?

A. No.

Q. No bequests?

A. I did cash in my policy, but that was in late 19—late 1951 or the early part of 1952, that I cashed in my policy.

Q. Of course, you didn't have any unusual occupation like gambling by which you could make unusual sums of money?

A. No, sir.

Q. Then all the money in your possession in the years of 1948, 1949 or 1950, or that you banked, came from one or the other, from the school funds of the Benavides Independent School District, either as salary or from whatever source it came?

A. Yes, sir.

Q. Now, do you know approximately how many thousands of dollars in currency you deposited in the San Diego State Bank in 1949?

A. No, sir. I do not have any idea.

Q. Well, would it surprise you to know that your bank deposits for that year alone totaled in excess of $12,000 in one bank?

A. I don't recall offhand what the amount would be for that year. I know that some of those deposits that were never—that were put in my name were notes, advances, and loans.

Q. And it was done contrary to your knowledge and against your wishes?

A. Some of it were done to my knowledge.

Q. Sir?

A. Some of those amounts were done to my knowledge.

Q. Some of it was done to your knowledge?

A. Yes.

Q. And some of it was done just in self defense, wasn't it?

A. No. I would say that if the amount of money I put in the bank in that period would run up to $12,000; I know it was composed of several loans and money that was paid to the bank by me for some other persons.

Q. Well, now, isn't it true that in addition to the $12,000, that you paid off a lot of loans with currency also in that same year? Since we are going to bring up loans?

A. No, I don't believe that the loans were paid in cash. It was a common practice for me to co-sign the notes of employees of the School District, and when the employee didn't pay, it was customary, I should be instructed to go to the bank and renew the note for 30 or 60 days, just to relieve the employees of that debt, then I would be advanced the amount of the renewed note so I could pay the note to the bank.

Q. I see. In other words, did you also get a cash bonus for renewing the notes or currency? Would they some-

times throw in $500 or $600 or $1000 in currency as a sort of bonus to you for borrowing money for them?

A. No, sir.

Q. I am confused about how the—how your signing the note for some employee of the School District, Mr. Heras, would increase your cash deposits in the bank.

A. It was a common practice, Mr. Foreman, to pay off those notes. The money was advanced to me, and I put the money in the bank and then pay out the money by check.

Q. Oh. The money would be advanced to you by somebody else?

A. Yes, sir.

Q. Would it be advanced in currency?

A. It would be advanced by check.

Q. Would you go cash the check at the bank and bring the same currency back from the cashed check and deposit the currency?

A. I don't believe it was handled that way. I would put the money in the bank and the bank would run the note as a check, you know, but I don't remember ever going to the bank with currency and paying off a note.

Q. I am getting at the deposits now. We have passed that other point a few minutes ago. I am asking you how would a deposit slip crediting amounts to your account, amounts of currency into the hundreds of dollars, how would it be entered as currency as a deposit if it weren't in truth and in fact currency? You say you were given this money to pay off employees' notes with checks. How would the money get into your account in currency?

A. I don't believe it would go in currency. It would go in in the use of a check.

Q. Actually every time you deposited a note, the deposit slip showed "Note," didn't it?

A. Yes, sir.

Q. I am not asking you about deposits of notes, Mr. Heras. I am asking you about deposits of currency. I am not claiming the $12,000 is all in currency, that is the total amount you deposited, but around eight or nine was currency. Such as was currency, can you account for how that currency got into your deposit with your not getting any part of the proceeds, no commission, no rake-off, no donations, no nothing. Just how do you account for several thousand dollars of currency, at least two or three times what you made, being deposited in your account with you so honest that it was painful?

A. Mr. Foreman, are you still talking about 1949?

Q. Yes. I am going to get to 1950 and 1951 in just a few minutes.

Q. I don't recall exactly how that cash was, but I am inclined to believe that some of that cash, if it reflects currency, it was money that I got from the Texas State Bank under notes and put it in my account in the San Diego for the payment of notes. Sometimes I would get money from the Texas State Bank to put in the San Diego State Bank to pay off those notes.

Q. Mr. Heras, do you have your bank statements and canceled checks for the years 1949, 1950 and 1951?

A. No, sir, I do not.

Q. By the way, did you ever agree to swear that George Parr broke into your Chippendale with a sledge hammer and chisel, and stole them? Did you ever suggest you would like to swear to that?

A. I don't believe I ever advanced anything like that.

Q. You weren't warned by two prosecuting attorneys that no jury on earth would believe that, were you?

A. No, sir, I was never cautioned or told.

Q. Sir?

A. I was never cautioned or told to make any statement like that. I have made a statement that the Chippendale desk I had there had been broken into, but I did not see the person who did it or what method they used to open up my desk, whether a chisel or a screwdriver, or something. The only thing I know, the desk had been gone into thoroughly.

Q. Where was this Chippendale desk you are talking about?

A. It was in what we called the general office, in the Parr Building.

Q. And you did not at a conference commencing at 2:05 p. m., May 29, 1956, in Room 1201, Texas State Hotel, suggest to District Attorney Sam Burris of the 79th District and Sam Ratliff, Assistant Attorney General of Texas, that you, Diego Heras, would swear that George Parr, you saw him take, I believe, a sledge hammer and chisel or crowbar and hammer and break into your desk and steal your bank statements and your canceled checks?

A. I don't believe I made any statement using that phraseology. I have made some statements that my desk was broken into and a drawer pulled out and the books taken out of my drawer, by persons unknown to me. I didn't see anybody break in when it was done.

Q. But the name George Parr wasn't mentioned in that connection at all?

A. I don't think so.

Q. And you were not warned that was going a little too strong by the distinguished prosecutors, were you?

A. I don't think so.

Q. And then you did not say, "Well, we'll just say that it was done and let the jury figure out who did it." Did the lawyers say that?

A. I don't recall their comment on that incident.

Q. Well, will you say they didn't say that?

A. I don't remember that they didn't say it.

The Court: Are you through with the desk breaking incident? Are you going into another phase?

Mr. Foreman: Through enough. I am ready to rest if the Court is.

The Court: Very well. Is there anything further that you want to develop on this particular thing?

Mr. Foreman: Judge, it will go much longer than just a question or two.

The Court: Very well. It is now ten minutes after twelve, and the jury is remined of the instructions previously given and the jury is excused until 9:30 Monday morning. I will ask counsel to remain.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Returning to Government Tender No. 11, I am going to reverse my ruling on Government Tender 11 in part. There is a part of it that may have some bearing, not on this case but on—it may have some relation to this witness Diego Heras, as it may relate to his bias, prejudice or animus as a witness. I refer to this part, which I will read:

"Until January 1, 1953, I was deputy tax collector for the Benavides Independent School District by my office in Benavides. I was acting secretary of the School District until July, 1951, but my office was in San Diego, Texas. I was demoted to deputy collector at that time because Mr. George Parr and I had an argument over the fact that he had told me previously to move the office to Benavides. I had not done it and Mr. Parr actually controls the political set-up in Duval County, and I lost favor with him as a result of that argument. I have been told since that the reason I ultimately lost my tax collector's job was because Mr. Parr does not like me."

I am going to deliver Government's Tender 11 to defense counsel, and it may be used in the respect stated it may. It does refer to the employment of this witness as deputy tax collector for the Benavides Independent School District, and that he lost favor with Mr. Parr, and it may be used to show bias, prejudice or animus as a witness. I will instruct counsel—before I state that, I want to see that the parts of this statement which relate to the payment of money or the non-payment of money to Mr. Denton or Mr. Smith, or that he made such a statement or he didn't make such a statement, are not related to this case, and I am instructing counsel to make no reference thereto. Anything further, gentlemen?

Mr. Wilkey: Your Honor, we ask that Government Tenders, the various numbers placed in the hands of counsel, after he has had an opportunity to inspect this last one, be returned to the custody of the Clerk. They, after all, are Government documents, from Government files, and we have produced them for inspection.

The Court: They were delivered to defense counsel for that purpose, for the purpose of inspection. They are entrusted to the custody of counsel, who are respected officers of the Court.

Mr. Wilkey: There is another angle to that, Your Honor. We were called upon to produce them and did, but we ourselves haven't had an opportunity to review portions of them, and I produced all the copies I had, some of them stapled together, and I just produced them as instructed by the Court and I think Government counsel should have an equal opportunity to look at Government documents with the defense.

The Court: I think so too. Do you want to do it at the same time?

Mr. Wilkey: Well, we weren't at the time they looked at them yesterday—

The Court: To be absolutely equal, how can we do that?

Mr. Wilkey: I suggest they be placed in the custody of the Clerk and withdrawn from the Clerk for indicated times for study, inspection and copy. We would like to make some copies of my documents because I produced them on order of the Court, incidentally.

The Court: You say copies. Do you want to photostat them, or how do you wish them copied?

Mr. Wilkey: I will have to look at these great volumes and tell which portions I want to copy. I want an opportunity to do that.

The Court: I don't see how you can both look at them at the same time.

Mr. Wilkey: I suggest they be returned to the Clerk and counsel for either side who wish to have them, indicate to the Clerk he will take them and for an indicated period and return them. In that way, I think we can work amicably enough.

Mr. Foreman: These documents, and each of them, except for 13 and 14, 11 and 12, whatever they were, have been in their custody for at least a year. They have had 365 days to look at them. We begged at the beginning of this man's testimony to have enough time to digest and compare with the numerous times this man has been on the witness stand. If we have a legal right to these, and to inspect and examine them—

The Court: Let me state this, I believe the purport of the decision in the Jencks case is that counsel is to have them for the purpose of cross examining the witness, and I think if defense counsel is entitled to them at all, they are entitled to them during that period.

Mr. Wilkey: Your Honor, we would just like an opportunity to inspect some of these documents ourselves, and I will say for Government Tenders 13, 14, 15 and 16, which I tendered this morning, I seized the opportunity to make copies of those, but on the others, 1 through 8, I have no written copies of these.

The Court: Let me say this, you will have that opportunity, but I think if defense is entitled to them at all, the Supreme Court says they are, and I have ruled from

this Bench they are entitled to them for this purpose, and if they are entitled to them at all, unless I have completely made a mistake, if you are entitled to them at all, you are entitled to them for the use in connectoin with cross examination of the witness. Cross examination is still in progress. When they have finished cross examination, if the Government then wants an opportunity to completely examine before he starts redirect, I will of course, allow that.

Mr. Wilkey: Thank you, Your Honor. There is one other suggestion I have. I produced those in the original, bound as they were in our files. I will say we did not have occasion to refer to those for some time, therefore my need and desire to make copies.

The Court: I will also say I have not found in the Jencks case the Government is entitled to them at all.

Mr. Foreman: We are not certain on that at all. We will be more generous than that and return them to them.

The Court: That is the intention of the Court, to have them returned, but I do not find in the Jencks case—

Mr. Wilkey: That case goes pretty far, doesn't it?

The Court: Yes, it does.

Mr. Wilkey: I have one other suggestion. I gave them in the original condition in my files. Some contained instruments of the same instruments, which are carbon copies.

The Court: You mean there is duplication?

Mr. Wilkey: Yes.

The Court: Well, if that is the case, I think one copy is all the defendants need. I will rule one copy is all they are entitled to. I don't think they are entitled to a copy for Mr. Foreman, Mr. Sharpe, Mr. Jones, and the other gentlemen around the table. One copy is all they are entitled to.

Mr. Foreman: If Mr. Wilkey didn't make himself clear or the Court didn't understand him—there is one statement this man made to Donato Serna that is a separate copy, and there is a copy of that statement bradded, sealed, and in every way it can be made within a cover, to an Internal Revenue agent, and referred to in that interrogation as an exhibit to this statement. It is the only such duplicate testimony.

The Court: Let me say any statements that are duplicated the Government may have one of the copies now.

Mr. Foreman: Except for what I stated, there is no objection.

Mr. Wilkey: I can think of another one.

The Court: If there are others, of course the same ruling will apply. I suggest they all be examined at this time, and I don't think it is fair to examine them in the presence of the Court. This trial is adjourned until 9:30 Monday morning. Court will convene at 2:00 p. m. for other purposes.

10-2355 MORNING SESSION—
JUNE 10, 1957

The Court: You may continue with cross examination.

10-2355 DIEGO HERAS,

being the witness who was on the stand at the time Court recessed on June 7, 1957, resumed the stand at this time, and continued his testimony as follows:

10-2355 CROSS EXAMINATION
(CONTINUED)

Q. (By Mr. Foreman) Mr. Heras, at the risk of repetition, will you tell us again how many times Mr. William Benson gave lists of names from which you wrote those fraudulent checks?

A. I believe it was either one or two times. More than one, I believe.

Q. More than one time. It was several times, wasn't it, Mr. Heras?

A. I don't know how many more times than one he gave me lists of checks, but I think it was more than one.

Q. As a matter of fact, he gave most of the lists of fraudulent checks to you during 1948, 1949 and the first half of 1950, didn't he?

A. No, I don't believe he gave me all of the lists.

Q. I didn't say all. I said most.

A. No, sir. Not most of the lists. He could have given me two or three times, but that was not a practice we followed.

Q. He could have given you two or three times lists of fraudulent checks?

A. Yes, sir.

Q. That is fraudulent names, fraudulent amounts, people that didn't exist, and for services, work, material not done or furnished?

A. Yes.

Q. You mean by that that is all he could have given you, two or three times, or could he have given you 20 or 30 times?

A. Mr. Foreman, I have reference to this list of checks that has been exhibited here, however, I know of many times that he did give me a list of names which was not done under the direction of Mr. Parr, which list contained names of persons that I knew had not worked. In that respect, he could have given me more, 15 or 20 times, you know, during those years. But lists of names of fictitious persons as shown in these exhibits here, I don't think he handed me over two or three times.

Q. Mr. Heras, I am not asking you about any exhibit. If I were, I would hand you the exhibit. I am asking you about checks that were not here but are represented in the fictitious, spurious or fraudulent checks over the years of 1948, 1949 and the first half of 1950. Please limit your answers to my questions, please, sir.

Mr. Wilkey: Your Honor, I submit the witness has answered it two or three times. Once he said he gave it to him one or more times. Twice he said he gave him those lists of fictitious people two or three times.

Mr. Foreman: If the Court please—

The Court: You may be seated. I am going to allow what would be a reasonable cross examination and I will permit counsel to continue.

Q. (By Mr. Foreman) Mr. Heras, my question is only with reference to fraudulent, fictitious checks, not any other kind. My question has nothing to do with any exhibit in the evidence here, but purely has to do with checks that are not in evidence. With that explanation, I want to ask you, please, how many times in the years 1948, 1949 and the first half of 1950 did William Marvin Benson give you a list of names that you knew to be fictitious and a list of items for which you knew to have been fraudulent, for you to write such checks?

A. I will say that many, many times.

Q. All right. Many, many times, and it might have been as many as 20 or 30 times, mightn't it?

A. No, I don't believe it was more than 15 or 20 time. I would say this, I want to make a little explanation, if it is permissible.

Q. Go ahead.

A. Sometimes a list of names would be handed to me after the board convened at a meeting, either along with the payroll checks approved and bills that were a list of persons that I knew had not worked and done anything for the School District, and still I was given a list of names either elated by Mr. Benson or the superintendent of schools.

Q. And that is the many, many times?

A. That would be once a month.

Q. A while ago when you gave the long, involved answer in which you stated there about good checks Mr. Benson gave you, did you mean to tell us then, or us to

believe or accept from your answer he only gave you the fraudulent, fictitious list two or three times?

A. I wanted to make a distinction between the two different kinds of checks.

Q. And each time he gave you this fictitious list of names and fraudulent work, both you and he knew they were fictitious and fraudulent, didn't you?

A. I don't know that I knew the names of persons on the list. I didn't know. I don't know whether he knew they were fictitious or not.

Q. Whether he knew they were fictitious or not, he knew they hadn't done the work the checks were to be written for?

A. I don't know whether he knew or not.

Q. Did you know it?

A. Yes.

Q. How could you know it if he didn't know it?

A. I am well acquainted with the people in that county, and Mr. Benson had worked for the School District then about—I don't know how long, but I doubt if he knew who this Montemayor was or any other name, but I was acquainted, still am acquainted, with most of the people in Duval County.

Q. Mr. Benson had lived there and been auditor of the School District there, handled the taxes of everybody in that School District, as well as for the county, everybody in the county, from 1938 to 1948, hadn't he?

A. I believe so.

Q. And you mean to say that you assume that you might have known they were fraudulent and fictitious, and he might not have known whether they were or not because you were better acquainted than he was?

A. Yes, sir.

Q. How many tax payers were there on the Benavides Independent School District tax roll in 1948, 1949, 1950, 1951 and 1952?

A. I don't recall how many items of assessments were on the tax roll.

Q. Approximately your best judgment?

A. My best judgment is around 1500, between 1500 and 2000 items.

Q. Did you or not on March 18, 1953 swear—"Many of these vouchers were issued at the express direction of George B. Parr and other were issued at the express direction of W. M. Benson. At times I would deliver the voucher to Mr. Parr or Mr. Benson. At other times I would present them at the depository bank where I would be handed an envelope containing money. This envelope would then be delivered to either Mr. Parr or Mr. Benson." Did you make that affidavit?

A. Yes, sir.

Q. After you made that affidavit, it was circulated generally there in the county, was it not?

A. No, I do not believe it was circulated.

Q. Well, after that and before you took the stand here last November, did you receive any money from W. M. Benson?

A. No, I haven't received any money from him.

Q. Sir?

A. During what time, Mr. Foreman?

Q. Commencing any time after March 18, 1953 and prior to November, 1956?

A. I don't recall that he gave me any money from the school. I think he advanced money. I was broke and I think I had to prevail on him for a long, which I don't think I paid it back. I don't know how much the loan

was, but I think it was about 100 or 125, something in that neighborhood.

Q. But the answer is, yes, you received 100 or $125?

A. Yes. I don't know exactly the amount, but he loaned me some money.

Q. And since that time, you have attempted to defend W. M. Benson each time you swore in one of these proceedings or made an affidavit, haven't you?

A. No, sir. I have testified to the best of my knowledge.

Q. Mr. Heras, with reference to your earnings of approximately, I believe you said, $75 traveling or car expense which you used in gas and oil, the $275 a month you thought perhaps in 1949, maybe $250, but at least not more than $275, would be $3300 a year, wouldn't it?

A. I believe so.

Q. Do you recall buying a new $4600 Oldsmobile at the Jack Kelley Oldsmobile place in Laredo, Texas, in 1949?

A. Yes, I bought a car—

Q. Do you recall—

Mr. Wilkey: He didn't finish his answer.

A. I bought the car in late 1948 or early 1949, I don't recall exactly.

Q. Do you recall whether or not you made approximately a $3200 payment in $100 bills?

A. No, sir.

Q. What did you pay down?

A. I don't recall the exact amount—I traded in a 1948 Chevrolet I had and I paid a difference in cash of $300 or $400, I believe.

Q. It was $3400?

A. No, sir.

Q. But it was paid in cash, in currency, wasn't it?

A. No, sir.

Q. Was it paid by check?

A. I paid monthly installments on that car for a long time.

Q. I can't hear you.

A. It was financed. I paid so much a month every month, but I did not pay for it in cash.

Q. Do you know how much of it you financed?

A. I don't recall.

Q. Do you know wheth you paid $3200 cash and it was financed for less than $1000?

A. I didn't pay any cash other than the difference—there was a difference there I had to put in.

Q. What did you pay income tax on? What total earning did you pay income tax on for the year 1949?

A. I don't recall, but I think it was mostly wages that were submitted. The rest were advances and loans.

Q. Well, we will get back to that in a minute. The only income tax that was paid was the withholding tax deducted by the School District?

A. Yes, sir.

Q. And you got some of tha back, didn't you?

A. Yes, sir.

Q. How much?

A. I don't recall how much.

Q. And then the only tax paid was on the $3300. wasn't it?

A. Yes, sir.

Q. Have you ever been filed on by the Internal Revenue agents for nonpayment of taxes?

A. On this 1949 income, no, sir.

Q. Have you been threatened with such?

A. No, sir.

Q. Have you been given immunity from whatever prosecution you might be liable to for that year in consideration of your testimony here?

A. No, sir, not to my knowledge.

Q. You were questioned by Mr. W. H. Niendorf in San Antonio, he took a statement from you in December of 1953, weren't you?

A. Yes, sir.

Q. And you were asked about that statement in a deposition taken on March 11, 1955, before Judge Dan Tobin, weren't you?

A. Yes, I believe so.

Q. And when you were asked what did Mr. Niendorf want to talk to you about, did you say, "I claim my constitutional privilege?"

A. Yes.

Q. And refused to testify on the grounds it might incriminate you?

A. Yes, I believe I gave that answer.

Q. Now, Mr. Heras, since I asked you questions Friday concerning your earnings for the year 1949, have you made any effort to ascertain the facts with reference to your bank account, your deposits and your checks, for which you wrote checks, so as to be able to explain the questions asked you last Friday?

A. Yes, I have examined some records.

Q. Where?

A. In the office.

Q. Which office?

A. Mr. Wilkey's office.

Q. When?

A. Saturday, and we went over figures this morning.

Q. All day Saturday?

A. No, just a portion of the day.

Q. And what about Sunday?

A. No, I didn't see anybody Sunday.

Q. And I understand now if there was $12,000 deposited in the year 1949 in one of your three banks, it was, you say, advances?

A. Yes, sir. Loans.

Q. What other explanation do you make besides advances?

A. I believe it was advances and loans.

Q. Advances and loans. Now, loans from whom?

A. It was loans from a bank, either from the San Diego State Bank or the Texas State Bank, and loans by the School District.

Q. Did the School District know it was lending you the money it loaned you, or did you just lend it to yourself and keep it quiet?

A. No, it was done at the direction of someone. I either askew for the money, and other times I was told to get the money and pay the notes at the bank. It was a common practice then.

Q. It was advanced by someone or else you were told to get some what, bills?

A. Get the money from some source and pay on those notes.

Q. Who told you to get the money from some source and pay off those notes?

A. I would either be told by Mr. Parr or Mr. Chapa to take care of this, and that person, either a janitor, a bus driver, or a schoolteacher, they would go to the bank and sign a note with them and we would swear him off, you

know, and I was given the money for that purpose, advanced in my name.

Q. You were given the money in the form of a check?

A. Yes, sir.

Q. It would be a Benavides Independent School District check on the Texas State Bank of Alice?

A. Yes, sir.

Q. And what did you do with that check? Did you take it as a check and deposit it in the bank?

A. Yes, sir.

Q. You wouldn't go cash it at El Chico and deposit the currency?

A. No, sir.

Q. And likewise with reference to the notes when you would make out a note, would you show on the deposit slip it was a note?

A. Yes, sir.

Q. Then any such advances would be shown on the deposits as advances and would be a check, and any such notes would show on the deposit slips as notes, wouldn't they?

A. I guess so.

Q. Who made out your deposit slips? Did you make them out yourself? Or have them made out at the bank by the teller?

A. I believe from what I have seen, most of the deposit slips were made out in my own handwriting.

Q. What you have seen? Have you seen copies of your deposit slips lately?

A. Yes, I have. I have seen them before.

Q. When did you see them lately?

A. I saw them this morning.

Q. Photostat copies of your deposit slips?

A. Yes.

Q. In Mr. Wilkey's files?

A. Yes. In his room there.

Q. I know, but they came out of those beer boxes he had his files in?

A. He didn't have those in those boxes. I think they were laying on the table.

Q. The boxes were there, weren't they?

A. I don't recall whether those boxes were there, Mr. Foreman. I didn't see them. If they were, I didn't see those boxes.

Q. Do you know whether the photostats or your deposit slips were obtained by the agents of the Internal Revenue Service for Mr. Wilkey?

A. I don't know.

Q. And how long before this morning and Saturday had you last seen the photostat copies of your deposit slips?

A. I don't know exactly but I think it was last—I think week before last.

Q. Where did you see them at that time?

A. They were in Mr. Wilkey's office.

Q. And how long did you examine them at that time?

A. I think I gave them about a 15 or 20 minute examination.

Q. Were you questioned about them?

A. I don't know whether I was questioned about them or not then. I looked through them.

Q. Mr. Heras, have you gone through Government's Exhibits 1, 2 and 3 to find—verify your story about the advances by the Benavides Independent School District or not?

A. I have seen the photostat copies of them, Mr. Foreman.

Q. Of what?

A. Of the deposit slips.

Q. I am talking about—you probably didn't know what I meant by Government's Exhibits 1, 2, 3, 4 and 5. I mean the annual reports of the School District. Every advance would show on there, wouldn't it?

A. Yes, sir.

Q. Here are two annual reports, the one Government's Exhibit 1 for the year ending August 31, 1950, and that would commence September 1, 1949, wouldn't it?

A. Yes, sir.

Q. And Government's Exhibit No. 2 ending 1951, which would commence September 1, 1950 and end in 1951, wouldn't it?

A. Yes, sir.

Q. Will you at recess either this morning or at noon go through and check out by line and page and the amount each of these advances so as to say how much of this $12,000-odd dollars was advances? Will you do that?

A. Yes, sir.

Q. Or whether any of it was?

Mr. Wilkey: Your Honor, he is speaking about, I think, $12,000 for the year 1949 and he is asking about Exhibits 1, 2 and 3. I don't know whether he intends to be confusing or not, but Exhibit 1 would only cover a portion of that, and 2 and 3 wouldn't cover it at all.

Mr. Foreman: I am asking for all advances. I am going to go into the other years also, 1950 and 1951. Would you go through and pick out the advances?

A. Do you want me to do it right now?

Q. No, sir. I don't want to take up the time.

The Court: Am I asked to make a ruling now?

Mr. Wilkey: I wanted him to clarify what he wanted done, and he has done so.

The Court: Very well.

Q. (By Mr. Foreman) I hand you 16 photostats of these, each bearing a picture of four deposit slips, and ask you to examine them please, sir, and see if you can tell us what they are?

A. Those are photostat copies of deposit slips of—

Q. Yours? Pardon me, go ahead.

A. —of money put in my account at the San Diego State Bank.

Q. And in what year?

A. It covers a year from January, 1949 through December, 1949.

Q. The bottom two are for January of 1950, aren't they?

A. Yes, sir, 1950.

Q. The bottom two on the last page?

A. Yes, sir.

Mr. Foreman: May we ask to give them the A letter and consecutive letters?

(Documents tendered to the Clerk and marked Defendant's Exhibit No. 208.)

Mr. Foreman: The exhibits are marked 208 and will be A, B, C, and so on when the Clerk has an opportunity at recess to number them.

Let's—you can keep those and see—I will ask you from my notes to select the deposit for January 15, 1949.

First I want to take January 5, 1949. You deposited your salary check of $225 and your travel expense check for $75, didn't you?

A. Yes, sir.

Q. On January 7, 1949, you deposited a transfer of $100?

A. Yes, sir.

Q. Is that transfer from one of your banks to another?

A. Yes, I believe it was a transfer from the Texas State Bank at Alice.

Q. All right, but on the 15th of January, 1949, you deposited cash of $110, didn't you?

A. Yes, sir.

Q. Do you know what that was?

A. No, I don't know.

Q. All right. On January 21, 1949, you deposited a check, tax work, for $350, didn't you?

A. Yes, sir.

Q. Do you know what that is?

A. That is—some of his money listed like this was used to pay off notes at the bank—

Q. Pardon me, sir. I didn't ask you what you used the money for. I'll get to that after a while. Right now I'm asking you how this money got in your account. What was it that was January 21, 1949?

A. It was no doubt a School District check.

Q. No doubt, and you signed that check, I mean as maker?

A. I don't—they haven't checked with me, but I imagine it was signed by me as acting secretary.

Q. And do you imagine this same Willie Benson countersigned it?

A. I guess so.

Q. Was it a check to pay somebody's taxes you deposited in your account also?

A. No—

Mr. Wilkey: He hasn't complete his answer.

Mr. Foreman: I am sorry.

A. No, there was no money received for any tax work that somebody else did. It was collected like that by me. I acquired the check and put the check in the bank, like it is listed here, to pay off somebody's account or either advanced to me.

Q. To pay off somebody's accounts or what? Advanced to you?

A. Yes.

Q. It was either to pay off somebody else's account or an advance to you?

A. Yes.

Q. And you and Mr. Benson advanced it to you?

A. Yes, sir.

Q. All right. In that same month, January 24, 1949, a check for a hundred dollars. Do you know whether that was another School District check signed by you and countersigned by Willie Benson, January 24, 1949?

A. No, I believe this was—it looks like a transfer to me. It reads: "Texas, $100," and I believe it is a Texas State Bank check.

Q. Would you like to have your Texas State Bank statement so as to see if that is what it was?

A. That may help, but since I have it marked here "Texas," I am inclined to believe it was a transfer check from that bank to this.

Q. Didn't you invariably mark your transfers "Transfers" so as to keep from having to pay taxes on them, income tax?

A. Well, sometimes I did and sometimes I may have not.

Q. Isn't is simply true, Mr. Heras, that you don't know what that was?

A. No, I don't know what it is exactly. I have reasons to believe it is a transfer check.

Q. All right. Then the next item, January 29, 1959, is currency, $200—I mean 1949. January 29, 1949, is just plan U. S. bills, currency, isn't it?

A. Yes, sir.

Q. Of course you put that in there, didn't you?

A. Yes, sir.

Q. Had you forgotten that when I asked you about it last Friday?

A. I didn't have this information with me last Friday. I couldn't tell.

Q. You forgot about any currency at all, hadn't you?

A. I didn't know. I didn't have anything—

Q. Pardon me.

A. I don't think my answer was quite definite whether I did or not.

Q. Isn't it true, Mr. Heras, you thought the only person in this courtroom who had a photostat copy of your deposit slips was the prosecuting attorney, and you felt safe denying—

Mr. Wilkey: I don't think he denied it. He was uncertain as to '48 and '49. I object to the phrasing of the defendant's question. It is contrary to the record.

The Court: For what reason?

Mr. Wilkey: I object to the phrasing of the question there which is contrary to the record, and contrary to what the witness just said his recollection to the testimony was.

The Court: I will allow the question. You may bring out any inconsistencies in redirect examination.

Q. (By Mr. Foreman) What did you tell us last Friday about making deposits of currency in the San Diego State Bank in the year 1949?

A. I don't remember exactly what I said to it, but it seems to me that you asked me whether I had put a lot of money in cash in the San Diego State Bank, and I didn't know just what you meant as a lot of money. I think I was right in saying I did put in a hundred or two hundred dollars in cash, but never any large amounts.

Q. Mr. Heras, didn't I break down by items your pay check, the salary check, the Thomas Y. Pickett check, the rent check, and didn't we just tabulate them and didn't you tell us about advances and about notes? Didn't we take each of these items last Friday?

A. I believe so.

Q. And didn't I ask how they got in the bank, whether you cashed them and deposited the cash, or who deposited or not? Didn't I ask you that?

A. I believe so.

Q. Didn't I ask you if you made any other currency deposits?

A. I don't recall.

Q. All right. Well, will you explain, please, sir, that $200 currency deposit on January 29, 1949?

A. It could either be an advance from the School District or money that I acquired from a loan at the bank.

Q. Money you acquired from a loan at the bank? At what bank?

A. Either the San Diego State Bank or the Texas State Bank. I would borrow some money and either deposit the note or get the cash for it.

Q. Are you telling us now that on the 29th of January, 1949, you borrowed $200 from the San Diego State Bank and they gave it to you in currency, and you redeposited it?

A. I don't know—it was either the San Diego State Bank or the Texas State Bank in Alice.

Q. Let's first get them by banks. Right now I am asking you about the Janury 29, 1949, $200 item. Are you saying that you did or did not borrow money on that day from the San Diego State Bank and deposit it immediately as currency? What is your testimony with reference to that?

A. I don't remember, Mr. Foreman. I don't recall whether I borrowed money that day from either bank or not, but it is my guess that it is perhaps a loan.

Q. Perhaps a loan?

A. Yes, sir.

Q. From whom?

A. It was either from the San Diego State Bank or the other bank.

Q. Or the Texas State Bank?

A. Yes, sir.

Q. The one Mr. Roach was with and is with?

A. Yes, sir.

Q. Isn't it true throughout your deposits whenever you

borrowed money, such as over there on May 18, 1949, when you deposited a note, that it showed on your deposit slip "Note"?

A. What page is it?

Q. The date is May 18, 1949, a note for $300, less $2.50 interest, $297.50.

A. It was entered like that sometimes.

Q. Again on June 11, 1949, isn't there a note for $30 less $1 interest, $29, less a draft for $9.18?

Mr. Wilkey: What was that amount?

Mr. Foreman 6-11-49, a note for $30, $1 interest, $29, less a draft for $9.18.

Isn't that the way a note would show on the deposit slip? Doesn't it show there as a note?

A. Yes, it does show but—

Q. Isn't it true that on May 18, 1949 and on June 11, 1949 was the only two times in that year that you signed a note at the San Diego State Bank?

A. I don't know, Mr. Foreman. I don't have the record with me.

Q. Then if it isn't a note, you have no explanation for it, have you?

O. I would say that it was currency all right, but I think I got that advance or loan from the other bank. If I didn't borrow money from the San Diego State Bank, I am sure I got the money from the other bank.

Q. By the other bank, you mean the Texas State Bank?

A. Yes, and not necessarily the same day.

Q. Well, we will get to that bank, but you know it came as a loan from one or the other of the two banks?

A. That is my best recollection.

Q. Sir?

A. That is my best recollection.

Q. Who at the bank made you that loan?

A. I would go to Mr. Donald at the bank, the Texas State Bank in Alice, Texas, to apply for a loan.

Q. And how would they make you a loan? Was it a bank check?

A. I would sign it, a note for the amount that I wanted, and then I would either put it in the bank there or I would get cash.

Q. You would get cash upon signing the note instead of a bank check?

A. Yes, sir.

Q. Where you didn't deposit it?

A. Sometimes I would, sometimes I got the money in cash.

Q. Did you ever get a loan at the Texas State Bank at Alice you didn't immediately deposit in your account?

A. I don't recall, Mr. Foreman. There might have been several cases where I put the note in the bank.

Q. My question is, did you ever put the note—that is not my question. My question is, did you ever make a loan at the Texas State Bank at Alice—

A. Loan?

Q. —which loan was not deposited immediately coincident with the loan in your account, your bank account, in the Texas State Bank when you made the loan? That is my question.

A. Yes, I believe sometimes I put the money in the bank. Sometimes I was given the money, and I didn't necessarily put the money that same day in the bank.

Q. But when you were given the money on a note that you made, it was in currency, or was it a check of the bank?

A. Mr. Foreman, you mean how the money was handed to me, either by check or by note?

Q. That is what I mean.

A. Sometimes I would get the cash. I would get the cash. In other instances, the notes was put in my bank account.

Q. Do you remember any specific instances when you ever got cash, so as to fix the time and date?

A. No, I don't, but I do recall it was entered both ways.

Q. We pass on to February. You deposited on the 3rd of February your $225 salary check and this $75 travel expense check, didn't you?

A. Yes, sir.

Q. And then on February 18, 1949, you deposited currency of $165, didn't you?

A. Yes, sir.

Q. Where did you get that?

A. That is one of these same instances where I got the money either from either bank and put it in there in cash.

Q. You mean you went and got it from the San Diego State Bank, or you got it from the Texas State Bank at Alice?

A. Yes.

Q. You didn't get it by sending Diego Navejar down to cash a check?

A. No, sir.

Q. A spurious, fraudulent, fictitious check to a nonexistent person, did you?

A. No, sir.

Q. And on that same day, you made another deposit "Check, Benavides Independent School District, advance, $600"?

A. Yes, sir.

Q. That was an advance, wasn't it?

A. That was an advance.

Q. Who signed that advance?

A. I don't recall, but it seems that during that year and month, Mr. Benson was the auditor and I have reason to believe he countersigned the check.

Q. You signed it as maker?

A. I believe I did.

Q. Then you and Benson advanced yourself $600, didn't you?

A. Yes, sir.

Q. And did you say anything to any of these defendants about that?

A. I don't know whether they knew about it or not, but I was told to do so. Sometimes I think this big deposit here of $600 was to pay off some notes at the bank rather than—made by employees of the School District.

Q. I beg your pardon?

A. Made by employees of the School District.

Q. And of course, you used it for that purpose, didn't you?

A. Yes, sir.

Q. Whose notes did you pay off?

A. Those notes were made out by employees of the School District, bus drivers and janitors and schoolteachers.

Q. I didn't ask you their occupations. Will you name one so we can get him up here and see if he remembers it? Name any one of them.

A. There was Sanchez that worked for the School District.

Q. What is his name?

A. Ezequio Sanchez.

Q. You know Ezequio Sanchez is in the insane asylum?

A. No, sir, he is not.

Q. You know he has been adjudged insane, and has been committed?

A. No, I do not.

Q. Isn't that the reason you remember Ezequio Sanchez?

A. No, sir. He has been working for the School District many years, and he has at times borrowed money from the bank and he either failed to pay and we just squared him up, you know. I would get the money and pay off his accounts, and the janitors and the bus drivers. I think there is one by the name of Carrillo on that note too.

Mr. Foreman: May it please the Court, all of this rambling is not responsive, and we object to it as not responsive.

Mr. Wilkey: He has been asking for some names, and he started to give him some names.

The Court: That is what I understood.

Mr. Foreman: The question I asked was if he didn't—if the reason you picked out the name Ezequio Sanchez was not that you know Ezequio Sanchez had been adjudged insane and committed to the insane asylum. That is the only question before us.

The Court: He doesn't know it, I understood.

Mr. Wilkey: If that is the only question before us, I understood it to be answered.

Mr. Foreman: It is the question to which he made this rambling answer.

What do you know about the mental condition of Ezequio Sanchez?

A. I don't know anything about his mental condition. I don't think he has been committed to a mental asylum.

Q. Do you know whether he spent time at San Antonio?

Mr. Wilkey: Can you specify time?

The Court: I don't think he needs to. The question is if he knows he spent any time. If he doesn't know any time he spent, a particular time would not be relevant, or period. If he does know he spent some time, we could ask him when, but if he doesn't know he spent any time that answers itself.

Mr. Foreman: I am ready to go on, if the Court wants me to.

The Court: Very well, sir.

Q. (By Mr. Foreman) How much was the largest note Ezequio Sanchez had, according to your recollection, in 1949?

A. It was around $150. I think between $125 and $150.

Q. Where did he owe that note?

A. I believe it was the San Diego State Bank.

Q. And that is what you say the $600 was for?

A. I imagine. I know it covered more than one note, Mr. Foreman.

Q. Who else's note do you claim the $600 covered besides Ezequio Sanchez?

A. And E. Carrillo, Jr. note.

Q. That you say he owed?

A. Yes.

Q. And how much was that?

A. I don't recall exactly, but it was over $100.

Q. That is $250. Who else's note?

A. I don't recall the other names, Mr. Foreman, but there were at times three or four different notes I was supposed to pay at the bank for other people.

Q. And you did pay on February 18, 1949 a note for E. Carrillo for $100 and a note for Ezequio Sanchez for $150, is that your testimony?

A. I believe it was more than two accounts I paid on.

Q. That is two. I didn't ask you if there was more. I asked you if you were telling this jury on that day you paid those notes for those men in that amount, Ezequio Sanchez in the amount of $150 and E. Carrillo in the amount of $100?

A. I don't recall on that specific date. I may have borrowed the money on February 18, the $600, but not necessarily paying the bank that same day. I might have but still I could have paid him off the following day or a week from that.

Q. At any rate, then, or within a week from then, you did pay $150 note for Ezequio Sanchez and a $100 note for E. Carrillo, that is, within a week of February 18, 1949. Is that your sworn testimony, sir?

A. I didn't say on that same day or the same names, but I was just giving those two names as an example of the practice that I had, that I followed during those years. I didn't say that I paid $600 for Ezequio Sanchez on

that day. It could have been some other employees of the District I was paying notes for.

Q. Then you are not saying you did that on that day, that week, that month, or that year, paid a note for E. Sanchez or E. Carrillo?

A. I am saying I have reason to believe that $600 was to pay off some notes at the bank. That is my best recollection.

Q. You called that a loan. You said, "I may have borrowed the money"?

A. Yes, sir.

Q. Did you ever pay back that $600 to the Benavides Independent School District?

A. No, because some of these cases it was not my money I was getting.

Q. Did you pay the note to the note teller at the bank?

A. I would pay it to any of the clerks at the bank.

Q. Well, I mean did you pay such as you paid out of the $600, did you pay it to Jose Lopez?

A. It could have been Mr. Lopez, Mr. Palacios, or other clerks. I dealt with them all and I don't know what date I contacted any specific teller there, but it was some teller at the bank.

Q. And on February 21, 1949, did you make a deposit of $100 in currency?

A. Yes, sir.

Q. Do you know whether that came from?

A. That is no doubt another loan.

Q. I see. And that loan would be—

A. From either the Texas State Bank or the School District or the San Diego State Bank.

Q. Yes, or the School District?

A. Yes, sir.

Q. Well, now, didn't you tell us whenever you got a check from the School District, you always deposited it as a check and didn't cash it?

A. I don't believe that I said that. I treated those advance checks, like $100, I would sometimes cash the check.

Q. You would sometimes cash a School District check somewhere else, and go put the proceeds from it in the bank?

A. Yes, sir.

Q. For instance, where did you sometimes cash School District check and take the cash from the School District check and put it in your bank?

A. I would cash a check of the Texas State Bank in Alice, Texas and bring back the money with me when it was a check, and the proceeds of notes, I would also get the money in cash.

Q. You never cashed them at various places of business, like Diego Navejar's or Domingo Gonzales' and Carlos Barrera's El Ranchito?

A. I don't believe I ever cashed any checks there. Most of those checks were handled direct at the bank.

Q. If you did, was this a $100 check from the Benavides Independent School District that on February 21, 1949 represents that $100 currency deposit in the San Diego State Bank?

A. It could have been.

Q. Why didn't you deposit the check in the San Diego State Bank as such?

A. Well—

Q. Why go through the motion of cashing it at one bank, going from San Diego ten miles to cash a check,

when the San Diego State Bank was within half a mile of your office?

A. Most of these checks, Mr. Foreman, I would make these checks and I used to go to the Alice State Bank every day, and I would have the check with me and I would cash it right there.

Q. Well, how far was the San Diego State Bank from the offices of the Benavides Independent School District in the year 1949?

A. Well, they were about eight or nine blocks.

Q. That is in the same city of San Diego?

A. Yes, sir.

Q. How far was the Texas State Bank of Alice from the office of the Benavides Independent School District at that time?

A. About ten miles.

The Court: Gentlemen, a recess is suggested and Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please. You may continue.

Q. (By Mr. Foreman) Mr. Heras, will you tell us if that $600 check, listed a Benavides Independent School District advance, dated February 18, 1949, was made payable to you?

A. I think so. I'm not sure, but I think it was made payable out to me.

Q. Do these exhibits down here cover that year when I asked you at recess to find the advances on the annual report? Do you have the one where that would have been in?

A. I didn't go through those reports. I thought I would do it during the noon recess. It would take more than 20 minutes to go through them.

Q. Do we have the annual report for the years 1948 and 1949?

Mr. Wilkey: The annual report for the years 1948 and '49, which would cover the months of January through August, 1949, is not in evidence here.

Mr. Foreman: I know it is not. That is why I asked if you had it, so we could find it.

Mr. Wilkey: No, I am sorry I don't have it.

Q. (By Mr. Foreman) All right, sir. Now, on the 24th of February, 1949, the $40 check was a transfer from where, the Merchants Exchange or the Texas State Bank?

A. That is correct.

Q. Then at the same time you were making deposits in the San Diego State Bank, you were likewise making deposits in the Texas State Bank at—

A. Alice.

Q. Do you know if your deposits for the month of January totaled $1,160?

A. I didn't know that.

Q. You didn't know that, and your deposits for the month of February, 1949 were $1,205?

A. Yes, sir.

Q. Now, on March 1, 1949, there was another currency deposit of $100, wasn't there?

A. Yes, sir.

Q. And then you deposited your salary and expense check on the 4th, of $75 and a $225 one, didn't you?

A. Yes, sir.

Q. And then on the 14th of March, 1949, currency, $100?

A. Yes, sir.

Q. And on the 16th of March, 1949 an advance of $300?

A. Yes, sir.

Q. Was that payable to you?

A. I think so.

Q. You signed it?

A. I made the check. He signed it.

Q. Who countersigned it?

A. I believe it was Mr. W. M. Benson.

Q. By the way, were you not, during this year, making out monthly checks to your brothers and cousins, or your cousin raised as a brother to you, H. Q. Heras?

A. Yes.

Q. You were. Was he doing any work for the school?

A. Not that I know of.

Q. Who signed those checks?

A. Some of those checks were signed by me and at times by Mr. D. C. Chapa.

Q. Who countersigned those checks?

A. During this period—during the year 1949, Mr. W. B. Benson was countersigning the checks.

Q. Can you tell us a single check on a single date that D. C. Chapa signed to H. Q. Heras, your cousin?

A. No.

Q. Can you tell us a single check that D. C. Chapa signed anywhere in the year 1949?

A. No, sir.

Q. As a matter of fact, D. C. Chapa was seldom ever at that office in San Diego, isn't that true?

A. He was there very frequently, Mr. Foreman.

Q. What do you call "frequently"?

A. Every other day.

Q. For how long?

A. For—indefinite periods, ever since the office was built, for he would come in and out most every other day.

Q. He was road overseer for the county, wasn't he?

A. What is that?

Q. Wasn't D. C. Chapa full-time road overseer for Duval County?

A. Yes, sir.

Q. Then on March 21, 1949, and again on the 22nd, 24th, and 30th, you signed and deposited $100 on each of those days and showed it as a transfer?

A. Yes, sir.

Q. Meaning that those were checks from the Texas State Bank or checks on the Texas State Bank that you deposited in the San Diego State Bank?

A. Yes, sir.

Q. And your total March deposits for March 1949 were $1200, weren't they?

A. That includes all checks, advances, loans.

Q. That includes currency, currency and transfers?

A. Transfers.

Q. How did those transfers get into the Texas State Bank at Alice originally, the money to get transferred out? Was that cash, currency deposited, or were they checks?

A. This money that was transferred from that bank was derived from either loans or advances, from either the San Diego State Bank or the Texas State Bank. I am inclined to believe that I would get a loan from the Texas State Bank and the money put in the bank there in Alice, and I would transfer the money from that bank back to the San Diego State Bank at regular intervals when I needed

the money, sometimes a hundred dollars, sometimes two hundred dollars, sometimes fifty dollars.

Q. Mr. Heras, I am confused in your use of the word either loans or advances from the bank. Do you mean to say that there is a distinction between a loan and an advance in your testimony here?

A. There is a distinction, yes.

Q. From a bank?

A. No. The bank did not advance me any money. They would loan me money.

Q. When you made out a note?

A. Yes, sir.

Q. And you had a liability ledger sheet showing the date of every note, didn't you?

A. Yes, I believe so.

Q. It is your testimony on March 21, 1949, you made a loan or made a note to the Texas State Bank at Alice, and were granted a loan, is that your testimony, sir?

A. Yes, so far as a loan is concerned. I mean not on that same day. I could borrow the money one day and transfer it the following week.

Q. All right. Then at sometime in March, 1949, you were given a $400 loan by the Texas State Bank at Alice?

A. I don't recall offhand, Mr. Foreman.

Q. Well, do you know that this money that was represented by these four $100 transfer checks deposisted in the San Diego State Bank in 1949 were the proceeds of a loan made by the Texas State Bank at Alice?

A. I am inclined to believe that it is.

Q. It wasn't cash deposits in the Texas State Bank at Alice?

A. I don't believe so.

Q. Did you ever make any currency deposits in the Texas State Bank at Alice?

A. I may have.

Q. As many or more than you did at San Diego?

A. I don't recall, Mr. Foreman. I don't know.

Q. Then again on April 5, you deposited your salary check of $225 and your traveling check of $75

A. Yes, sir.

Q. And then on the 12th of April, you deposited currency in the amount of $100, didn't?

A. Yes, sir.

Q. Do you know what that was?

A. No, I do not.

Q. And then you deposited, on April 13, check 25212 for $45, didn't you?

A. Yes, sir.

Q. And then on 4-16-49, you deposited just a check for $250. It doesn't say advance, does it?

A. No, it does not.

Q. And again on April 29—by the way, on that $250 check, was that another Benavides Independent School District check, or do you know?

A. No, I do not know.

Q. You don't know whether it is money you had loaned and cashed for somebody and they had paid you a check?

A. No.

Q. But you frequently did make such $200 and $300 loans gratuiously, day and night, didn't you?

A. Well, not every day. I didn't borrow the money every day.

Q. I am not meaning what you borrowed. I mean money you had, that would take out of your pocket, rolls of $100 and $50 bills, and loan to people in Bena-

vides and elsewhere in Duval County. Did you or not do that?

A. No, sir.

Q. All right. Now, again on the 29th of April, a check for $200 less cash $100, a deposit of $100. Do you know what that $200 check was that you got credit for half of it and cash for the other half?

A. No, sir, I do not.

Q. You don't know whether that was a BISD check or not?

A. No, No, there is no indication here as to what source it could have been.

Q. If that had been an advance, you woud have shown it as an advance, wouldn't you?

A. More than likely, yes.

Q. And—pardon me, did you have something to explain?

A. Yes. It could have been Thomas Y. Pickett's check for $200, but I don't know.

Q. Mr. Heras, didn't you tell us that Thomas Y. Pickett's check came in after the tax roll was made up in the fall? You swore to it. You have under oath testified you were usually paid that in the latter part of the year after the tax roll was made up in the fall, didn't you?

A. Not necessarily immediately after the completion of the rolls. It seems to me that I could have waited two or three months to get that.

Q. Well, he would have waited about six months, or you would have held the check six months, if that would have been it you deposited on April 29, and it was due after the making of the roll in October?

A. No, I don't believe I would have held that check. I don't remember what that check is.

Q. You don't even think it was a Thomas Y. Pickett check, now, that he paid you in the fall and this was in April? You don't think this was a Thomas Y. Pickett check, that one for $200?

A. This one here?

Q. Yes, sir.

A. No, I just don't know.

Q. Your April total was $795, wasn't it?

A. Yes, sir.

Q. They can hardly hear you.

Mr. Wilkey: I didn't hear the last question and answer. I am sorry.

The Court: It was a remark.

Mr. Foreman: I said, they can hardly hear you.

Then in May of 1949, on the 4th, you had made your regular deposit of your travel check and salary, one for $75 and one for $225, didn't you?

A. Yes, sir.

Q. And then you had on the 14th, currency $100. Do you know what that currency was from?

A. No, sir, I don't.

Q. And then you had, on the 18th, a note for $300 less $2.50 interest, $297.50. That is the first time a note has appeared, isn't it, in the year 1949, on your deposit slips? Isn't that true, sir?

A. This is the first—the first note, yes, that has been so listed on a deposit slip.

Q. All right. As a matter of fact, most of the notes that you made were just credited to your account without any deposit slips being made, weren't they?

A. I don't know that they did.

Q. All right. Now, you wrote yourself two travel checks in May, didn't you? One that you deposited on the 4th and another one—the one on the 4th of $75, and another one on May 19 for another $75?

A. Yes, sir.

Q. Did you have two cars that you rode in back and forth that month from Benavides?

A. No.

Q. That was just for instance, wasn't it, that extra travel checks?

A. I would get an extra travel check when I would represent work done on my car that would exceed the $75. I would get the following month's travel expense check.

Q. And if the amount exceeded was five or six dollars, you would still get a $75 check?

A. Yes, sir.

Q. That was to make sure, so you would know what the check was for? It wasn't in regard to the amount of expense you had, but so you would know what to charge it to, whether to charge it to travel or not, wasn't that true?

A. Yes, sir.

Q. Did you in addition to—you mean that you only paid bills for the repairs of your car out of cash from your travel checks?

A. I did, yes, sir.

Q. Is that the only way you paid them?

A. No, it was handled in another way also. Sometimes the school would pay the repair bills direct.

Q. On what car?

A. On my car.

Q. In 1948, you had a 1948 Chevrolet, didn't you?

A. I had a 1948 Chevrolet, but I think during the month of April or May I had a new car, a 1949 Oldsmobile.

Q. Then this was for repairs on a brand new Olds? That $75, that second travel check?

A. Well, I don't know. It could have been an old bill, too, see? I did have some trouble with my new car, but frankly I don't remember whether I had that new car in May '49 or not.

Q. As a matter of fact, you had a guarantee on the car in the month of May, 1949 that any expense would have been handled by the seller of the car, didn't you?

A. If I had a new car, yes.

Q. Digressing a moment from that item and getting down to the policy of paying your repair bills, as you have just explained, if you had a repair bill that exceeded your $75, you would get an extra one no matter what the repair bill was? This has to do with April, perhaps a year in advance, 1948, in the spring. What car did you use during that term, April of 1948? What kind of car were you driving in your work for the BISD?

A. I was driving a four-door 1948 Chevrolet.

Q. How long did you drive it?

A. I drove that car about—I don't know exactly whether eight or nine months.

Q. Didn't you own a jeep at that time too?

A Yes.

Q. Who drove it?

A. My son.

Q. You didn't drive the jeep?

A. No, sir, I didn't.

Q. It wasn't used in connection with your school business?

A. No, sir.

Q. But you paid for the repair on it with school checks, didn't you?

A. I don't believe so.

Q. Pass an optic over that. Now, did you or didn't you?

(Counsel tenders a document to the witness.)

A. It is marked like that. I don't know that it was paid.

(Documents tendered to the Clerk and marked Defendants' Exhibits 209-A and B.)

Q. The items that I just presented you, for the record, are now marked Defendants' Exhibits 209-A and B, and A is a statement from Garcia's Parts & Service, San Diego, Texas, April, it says 1949 here. Yes, and it says—

A. The date is April, 1948.

Q. I know it is. One says 1949 and one says 1948. It is marked in pencil, "Okay, Diego." Is that your okay and your name?

A. It looks like my handwriting, yes.

Q. And the amount of $16.29, isn't it?

A. $16.29. Yes.

Q. $16.29, and the 209-B is A. A. Griffin Garage, associated with Garcia's Parts & Service at San Diego, Texas, isn't it?

A. Yes, sir.

Q. And it show to have been for work done on what make or model of car?

A. It is a jeep.

Q. And the job, "Tune motor 390, overhaul"—what is that? "Replace gear shift or overhaul" some kind of "gear shift, $5.50, and replace gear shift rod and hauling, total labor $9.40, total parts $5, gas and oil and grease, $1.89." It shows it was signed by whom?

A. By me.

Q. That is your signature?

A. Yes.

Q. It shows received by you, and it shows to have been paid on May 13, 1949, by Benavides Independent School District check No. 25418, doesn't it?

A. Yes.

Q. Well, then, what was that, just an oversight?

A. This jeep was not used in connection with the School District.

Mr. Wilkey: We have no objection to this, but he hasn't offered it in evidence and it is being passed to the jury.

Mr. Foreman: I am sorry. Offered in evidence.

The Court: Has it been identified?

Mr. Foreman: Yes. Exhibits 209-A and B.

The Court: It is admitted in evidence.

Q. (By Mr. Foreman) You have stated it was not used in school?

A. In connection with the school activities, but I would drive that jeep on school business more than once when my car was held in the shop in some place and I didn't

have any way of going back and forth. I would have to use the little jeep. I used it several times going to San Diego, to Benavides, and over to Alice about my work.

Q. Then you want to retract your former testimony, before I showed you this inventory, to the effect that you did not use it in connection with the BISD business? You went to straighten the record?

A. I want to straighten the record, yes. The jeep was not used directly in connection with the School District. I would use it on some cases, in some instances, but what I mean, it was not the regular vehicle I used for school purposes.

Q. But you did testify just before I showed you this inventory that you didn't use it in school business? You swore to that less than eight minutes ago?

A. Yes, I said it in that sense.

Q. And you didn't know I had this, did you?

A. No. I didn't know you had it.

Q. If you had known I had it, you wouldn't have sworn that way about the jeep? You would have said you used it in school business?

A. I don't believe so if I had known it. I didn't know.

Q. You didn't know I had it?

A. I didn't know you had it, but I didn't explain myself, you know, that—you didn't ask me whether I had used that car any time or two. I attempted to say something about using that jeep three or four times, or maybe more. When my car was in the garage, I had to use that means of transportation.

Q. You attempted to say it, but I didn't let you. Is that what you meant?

A. No, I just wanted to restrict my answer to yes or no, but I wanted to make a little explanation there.

Q. As a matter of fact, you had a brand new 1948 Chevrolet in 1948, didn't you?

A. It was a used car, all right.

Q. Well, it was the year 1948 model, wasn't it?

A. I bought it in 1948, but I don't know whether it was a '47 model or a '48.

Q. Didn't you tell us a while ago you traded in a 1948 Chevrolet on a 1949 Oldsmobile in 1949?

A. Yes, sir, I did. I don't recall whether I traded it in 1948 or 1949.

Q. Regardless of when you traded it in, the question is not when you traded it in, but are you calling it your 1948 Chevrolet or your 1947 Chevrolet?

A. I said a 1948 Chevrolet. I called it a 1948 model. It could have been a 1947. It was a used car. It was in good shape.

Q. You mean the 1948 Chevrolet was a used car?

A. Yes. It had been driven, I don't know, five or ten thousand miles when I bought it.

Q. When you bought it. While we are digressing a minute, will you tell the jury whether or not your son drove this jeep most of the time?

A. Most of the time, yes.

Q. In fact, he drove it all the time, didn't he?

A. He used the jeep. I also used it for my personal business.

Q. Personal business as distinguished from the school business?

A. Yes. But now I recall when I didn't have any—my car was either in the shop, I couldn't use it, and I had to use the jeep.

Q. Do you know what School District check paid for that jeep, the number of the check that actually bought the jeep in the first place?

A. You mean paid for this account here?

Q. Yes—no, no. Not that account. When you bought the jeep. When did you buy the jeep, whom did you buy it from, and what was the number of the School District check that paid for it?

A. I don't recall. I don't believe I paid it with a School District check. I paid it—I don't know. I don't know whether—I didn't buy it with a School District check, I know.

Q. Are you certain of that, Mr. Heras?

A. Yes, sir.

Q. When did you buy it?

A. I don't recall the date. I think it was 1948.

Q. And you think you know where you bought it?

A. No, I don't believe—it was either Corpus or Alice, Texas.

Q. Or San Antone or Houston?

A. No, I don't think it was that far. I believe it was Corpus or Alice, Texas.

Q. Do you know whom you bought it from?

A. No, I don't recall.

Q. But you personally bought it, didn't you?

A. Yes, sir.

Q. And you bought it new?

A. No, it was an old jeep.

Q. And you just—all you can recall is that it was there. You don't know where it showed up from?

A. I bought the jeep, but I don't know whether it was in Corpus or Alice, Texas.

Q. Do you know whether you bought it from a dealer or an individual?

A. I think it was a dealer.

Q. You think it was. You think you know where he

was in Alice, if he was in Alice, or do you think you know where his place was in Corpus, if it was in Corpus?

A. No, I don't believe so.

Q As a matter of fact, one of the reasons you don't know, Mr Heras, is because you do not want him subpoenaed here as a witness, isn't that true?

A. Subpoena who, Mr. Foreman?

Q. The person you bought this jeep from. If you told us his name, you are afraid we would subpoena him?

A. No, I just don't know now the name of the company or individual, Mr. Foreman.

Q. Now, you are positive though that it was bought in the year 1948, either in Alice, Texas, or in Corpus Christi, Texas?

A. Yes. It was either—

Q. Go ahead, sir.

A. It was either bought in Corpus or Alice, Texas during 1948, Mr. Foreman. As a matter of fact, I don't recall exactly whether it was '48 or '49 that I bought the jeep. It was not—I think it was financed by some company. I didn't pay cash for it.

Q. Financed by what company?

A. I don't recall exactly.

Q. You don't know who carried the paper on it?

A. I don't recall.

Q. And over how long a period of time did you make payments to the company for the car you don't know where you bought or who you bought it from?

A. I don't know exactly whether six or eight months. I don't remember.

Q. Did the boy start driving it immediately when you bought it?

A. Yes, sir.

Q. Now, see if this helps refresh your memory, Mr. Heras. Was or not this jeep Government surplus offered to subdivisions of the Government, such as schools, and was it or not purchased at a Government sale in San Antone, Texas?

A. I don't think so.

Q. Could that be true or not?

A. I don't think so. I don't think so. The school bought several surplus vehicles in San Antone, but I don't believe that included any small jeeps with it.

Q. You don't?

A. No.

Q. When did the school buy several surplus vehicles in San Antone?

A. I don't know. Either '47 or '48.

Q. At the same time this jeep was bought?

A. I guess so.

Q. Whom did they buy them from?

A. I really don't know. They bought—the school bought two vehicles in San Antone. I don't know just where and how—exactly the year they bought them.

Q. Are you through?

A. Yes, sir.

Q. Mr. Heras, do you have any papers that would give us the motor serial number of this jeep so that we might trace the title of it through the Highway Department of the State of Texas?

A. No, but I can endeavor to get the license number or serial number or motor number and everything.

Q. You did record it in Duval County, the license, in the year 1949, didn't you?

A. I don't remember. I think it had a tag—I think Nueces County tag on that jeep.

Q. You think it did?

A. Yes.

Q. Can you make certain so we might go to the records and trace the title to help you recall where you bought it and who you bought it from?

A. I don't know that much information.

Q. Did you carry insurance on it, so as to give us the company or agent that could give us the motor serial number?

A. No.

Q. If you did, you don't know who it was, do you?

A. I am pretty sure the finance company carried insurance on it.

Q. But you don't know who the finance company was?

A. No, I don't recall.

Q. Did you mail in your payments or take them in personally each months?

A. I don't know whether I mailed them in or not, Mr. Foreman.

Q. You don't know whether you mailed them or took them?

A. That is right.

Q. You don't know whether you made eight trips to the same finance company without knowing where it was or which city it was in?

A. As I said before, it was either Alice or Corpus.

Q. The finance company?

A. Yes.

Q. And it is possible you made as many as eight trips making personal payments on that jeep, is that true?

A. No, I don't recall whether I made eight or nine or five trips.

Q. Anyway, you have made as many as five, or perhaps eight or nine?

A. Perhaps.

Q. Each month, and you made them in person?

A. Well, checks—the payment on that jeep, and I would either mail them in or the company collector would come by and pick it up.

Q. You didn't make any trips to the finance company?

A. I imagine. I think I would sometimes go to the finance company.

Q. Will you tell us how many such trips you made to the finance comany?

A. I don't remember.

Q. But you don't know what street it was on or if it was in Corpus, or whether it was in Corpus or not, or whether it was in Alice?

A. No, I don't recall.

Q. You are certain it wasn't in San Antone?

A. No, it was not in San Antone.

Q. Were all of these items that were bought, surplus item in 1947 and 1948 from the United States Government by the School District, paid for by one check or paid for with separate checks?

A. I don't recall.

Q. Did you write the checks?

A. I don't know whether I did or not.

Q. If it was written in 1947 or 1948, who would normally have written the check?

A. I would normally have written the check or Mr. Benson or someone there in the office.

Q. Would have countersigned it?

A. Yes, sir.

Q. Now, whose name was that truck registered in? Yours or your son's?

A. I believe it was registered in my name. I—

Q. Go ahead, sir.

A. I think I can locate the name of the finance company, but it will take me some time to locate it.

Q. How long do you think it will take?

A. I don't know. Probably three or four days. I will have to go down there and check.

Q. Go down where?

A. Either Corpus Christi or Alice.

Q. You would have to go around and look for familiar streets, and if you felt you were getting warm, you would find out and if they hadn't moved the office, you would find it?

A. I can either go to Nueces County or Jim Wells County city hall and locate the title certificate on it. The number of the title certificate.

Q. If you could give us any of the information I have asked you, we could do it too.

A. Yes.

Q. Is that the reason you can't remember?

A. No, I just don't remember.

Q. Mr. Heras, what became of that jeep?

A. I sold that jeep in 1949, I believe.

Q. What time of 1949?

A. I don't recall exactly.

Q. You don't know whether it is the first part, the middle part, or the latter part?

A. I don't recall.

Q. Whom did you sell it to, do you remember?

A. Yes, I sold the jeep in—I don't know, either late '48 or early '49, but my best recollection is that I sold that jeep to a man named Enselmo Elizondo.

Q. Enselmo?

A. I believe that is his name. I am not very sure, but that is my best recollection.

Q. Do you recall whether that is his first name or last name, or was that his only name?

A. That is his first and second name.

Q. His first and second name?

A. Enselmo is the first name and the second is Elizondo.

Q. Elizondo Enselmo?

A. Enselmo Elizondo.

Q. Is there anyone else besides you who knows Enselmo Elizondo?

A Yes.

Q. Where is he?

A. I think he is in Benavides, Texas.

Q. What does he do?

A. He works in the oil fields.

Q. And where does he live?

A. I don't know whether he lives there right now or not.

Q. That is the only jeep you ever owned?

A. That is the only one I ever owned.

Q. And the only one your son ever owned?

A. Yes.

Q. Sir?

A. That is the only one that I ever had.

Q. Is it also the only one your son ever had?

A. Yes.

Q. Will you tell the jury whether or not your son took that jeep to school when he went there, painted it red and took it to school in the year 1952?

A. No, I don't believe I had that in 1952.

Q. Well, if he took a jeep to school painted red in 1952, it was that jeep, wasn't it, because that is the only jeep you ever owned?

A. No, it wouldn't have been that same jeep.

Q. Sir?

A. I don't believe it was the same jeep. I sold that in that year.

Q. Did you buy it back or repossess it?

A. No, sir.

Q. You never had it in 1949 or late '48?

A. Not since I sold it.

Q. Where did your son go to school in 1952?

A. In Benavides, Texas.

Q. Did he have a red jeep?

A. The jeep he had was painted red, yes.

Q. Did your son drive a red jeep to school, back and forth, in the year 1952?

A. He may have driven somebody else's jeep but not my jeep, because it was sold in 1952—it was already sold in 1952.

Q. When was the last time you saw Enselmo—what is the last name?

A. Elizondo. I haven't seen him in a long time, about a year or two.

Q. Do you know anybody else except you that has seen him in a long time?

A. No.

Q. Do you know whether or not he is even in the United States or not?

A. No, I don't know.

Q. As far as you know, he may, if he is living, be in the army in Europe?

A. No, I don't believe he is in the service.

Q. How old a man was he?

A. I would judge he is still—he must be around 35 years old.

Q. Did he ever do anything besides work in the oil field?

A. No, I don't know. All the work I know him to do was oil field work.

Q. All right. Now, Mr. Heras, we had completed the month of April. Getting back to these, I believe we were at the month of May. No, I believe—where was that second traveling check. Yes, we were in the month of May, and that second travel check for $75 brought on the digress.

By the way, explain to us how it happens that you wrote a BISD check for this jeep repair bill when you were supposed to pay it if it was under $75, out of your $75 a month expense account? Your traveling expense account?

A. I don't know. It was either I didn't have any expense money then, or just that, I think.

Q. Sir?

A. I don't believe I had any expense money then.

Q. You just ran out of money, and wrote a School District check for your personal bills, is that your explanation?

A. I believe, like I said, in some cases I used the jeep to go back and forth to work and it could have been one of those things, I was using the jeep for School District purposes and I ran that bill in.

Q. You happened to think "I rode in this thing going to school one day, so I'll pay this with a School District check"?

A. No, I am inclined to believe I had trouble while using it and just drove it into the garage to have a tune-up and repair.

Q. And how long after you got the car back before you sent the check? Did you give a check at the time you picked up the car?

A. I don't remember.

Q. Didn't you just pull out one of those blank BISD checks you carried around in your pocket already autographed by Mr. Benson, and fill it out right there at the scene and pay that bill with it?

A. No, sir.

Q. You didn't do that?

A. No, sir.

Q. When did you send the check that is numbered on the face of the bill?

A. I don't know the date it was sent.

Q. Mr. Heras, did you, after that $75, the same day you deposited this second $75 travel check, deposit currency in the same deposit May 19, 1949, in the amount of $100 and a check for $250?

A. Yes, sir.

Q. Do you know where that currency came from?

A. No, I don't.

Q. Do you know where that check came from?

A. No.

Q. It is not marked advance, is it?

A. It is not, but more than likely it is an advance.

Q. You don't know whether that was a check that had been written to some fictitious person and endorsed and deposited by you as though you had cashed it for the fictitious person?

A. No, I don't believe so.

Q. It might have been though?

A. No. I didn't follow that practice.

Q. You didn't? Most of those you sent to be cashed by Diego Navejar—

A. No, sir, I never gave him any school checks to cash.

Q. —or H. Q. Yeras?

A. No, sir.

Q. On the 31st of May, 1949, "M-1-c check $20," does that mean miscellaneous, or could you tell us, sir? What does m-1-c mean?

A. I don't know what m-1-c means.

Q. Sir?

A. I don't know what that is.

Q. Well, your total for May, 1949 was $1,142.50 in this one bank, wasn't it?

A. Yes.

Q. All right. Then on June 7, 1949, your first deposit was a currency, $130, wasn't it?

A. Yes, sir.

Q. Do you know what that currency—where it came from? What it was the proceeds of?

A. No, I do not.

Q. Then you deposited your salary and travel checks, $225 and $75 on one slip of the 10th of June, 1949?

A. Yes, sir.

Q. And on the 11th of June, 1949, you executed a note for $30, from which a credit of $1 interest was deducted, and you got a draft for $9.18, and deposited $19.82, didn't you?

A. Yes, sir.

Q. And on June 22, 1949, you deposited currency of $45?

A. Yes, sir.

Q. By the way, wasn't one of those checks H. Q. Heras cashed a $45 check?

A. I don't remember.

Q. You don't recall handing him a BISD check to H.

Q. Heras for $45?

A. No, sir, I don't recall it.

Q. You may have done so?

A. Could have been, but in this case, I don't know whether that is—what that $45 is.

Q. If he did cash a Benavides Independent School District check for you, he gave you the money for it?

A. I never did anything like that, gave him any of the proceeds.

Q. I don't mean a check made payable to him, but to some nonexistent person endorsed and cashed by H. Q. Heras?

A. No, sir.

Q. On June 23, 1949, did you deposit $450 in currency?

A. Yes, sir.

Q. Was that four $100 bills and a fifty?

A. I don't know the denominations. I don't recall, but it seems to me it was—are you asking the proceeds?

Q. Yes, sir.

A. I think this $450 was a loan.

Q. You think it was a loan?

A. Yes, sir.

Q. From what bank do you think it was a loan?

A. From the Texas State Bank or the San Diego State Bank.

Q. That is one June 23?

A. Yes, sir.

Q. Now—well, now, you made a loan on June 18, 1949, from the San Diego State Bank for $300, didn't you?

A. I don't have my bank ledger with me.

Q. And this account—you don't know whether this account was credited with that on June 18 or not?

A. No, I don't recall.

Q. Aside from those deposits, not even including a deposit or not, you don't know whether you were credited with that $350 on June 18 or not?

A. No, I don't recall.

Q. And isn't it true you didn't make another note until July 18 when you made a $170 note at the San Diego State Bank? I am not talking about deposits. I am talking about notes. That didn't show on your deposit slips. I am asking about your memory. Do you recall?

A. No, I don't recall. I see where there is $175 entry here on July 29.

Q. You mean June 29. Yes, there is one on July 29 too, but I am up in June here. Let's finish with June. There is one on June 29, a check deposited for $175, isn't there?

A. Yes, sir.

Q. But as to—it is your testimony that this large amount of currency on June 23, 1949, represents a loan either from the Texas State Bank of Alice or the San Diego State Bank?

A. Yes, sir, that is my belief.

Q. That is your belief. It couldn't be from some other source?

A. Well, I don't know, Mr. Foreman.

Q. Mr. Heras, if it was a loan from the San Diego State Bank, wouldn't it appear just like the loan does appear, the second item above 6-11-49, on the deposit slip? It shows it to be a note, and like it shown on May 18, 1949, a $300 note less interest, total deposit $297.50? If this $450 were a note of the San Diego State Bank, wouldn't that be what is on the deposit slip, the photostat copy of which you have in your hand?

A. I guess so.

Q. Then actually you know it wasn't a note, don't you?

A. Well, it could have been money that I got from one bank and put in the other bank.

Q. I see.

A. Sometimes—may I make a little explanation?

Q. Certainly.

A. Sometimes I would borrow money from the Texas State Bank, and I would get the proceeds in cash, and I would come back to the San Diego State Bank and put the money in the bank.

Q. You were borrowing from Peter to pay Paul?

A. That is right. Most of these cases I was borrowing money to pay for somebody else's note.

Q. Mr. Heras, haven't you sworn at least three times under oath that the most currency you would ever have at any given time would be the sum total of your salary checks? Haven't you sworn that three times under oath with reference to your habit of carrying currency?

A. I have testified that carrying money in my pocket, money that belonged to me, never exceeded the check and travel expense check, but as far as amounts of money carried by me, I carried large amounts of money sometimes, for somebody else.

Q. Well, are you—I have reference to your testimony in this case, the former trial of this case last November, around the hall here in this court house, didn't you at that time in response to Mr. Wilkey's questioning swear so far as your custom of carrying currency was concerned, you would never have more than the amount of your salary check?

A. In money belonging to me.

Q. Well, did I ask you as to—did you ever carry money belonging to you of more than your salary check?

A. I don't recall, but I have answered that that was my thinking then.

Q. If you answered it, that was your thinking?

A. Yes. That is what I had in mind, as to money belonging to me.

Q. Well, did this $450 that you deposited in Diego Heras' account belong to you?

A. I don't think so.

Q. You don't think the money you deposited belonged to you?

A. I don't think so. Most of those large amounts were given to me for that purpose.

Q. Did you have a mental reservation, Mr. Heras, about the proceeds from the checks of the BISD made to spurious, fictitious people that were fraudulent as to their amounts, insofar as any work was done for the School District or goods, wares or merchandise received, and do you have a mental reservation as to the proceeds from those checks, saying, "I am going—while I am going to deposit this in my account, it really doesn't belong to me. It is stolen funds." Is that the reason you say you don't think this $450 belonged to you?

A. No, sir.

Q. Will you tell the jury who that $450 that was deposited on June 23, 1949, belonged to?

A. Mr. Foreman, I couldn't definitely say whose money I was paying for on that day. I don't have any records to show, and I have reasons to believe that I was just getting the money to pay somebody else's account because that was common practice for me to do.

Q. You have reason to believe you were just getting the money to pay somebody else's account?

A. Yes, it was a common practice during those days.

Q. Do you know where you got that money from and whose account you got it to pay?

A. No, I don't recall whether it was proceeds of loans, advances, or what have you.

Q. You don't know whether it was proceeds of loans, advance, and what was that last, "what have you"?

A. Yes.

Q. You mean by that, you don't know what it was at all? Is that what you mean?

A. I don't remember distinctly just what that $450 was.

Q. At any rate, that $450 exceeded by 50 per cent the total amount of your salary check and travel check, didn't it?

A. Yes, sir.

Q. And when you swore under oath you never carried or had in your possession more than the total amount of those two checks, your salary and expense check, in response to Mr. Wilkey's questioning last November, you had a reservation as to the amounts. You didn't figure under oath including those items?

A. No.

Q. Mr. Heras, on June 29, a check for $175. Do you know the source of that check?

A. No, sir, I don't.

Q. Then your total in this one bank of deposits for the month of June, 1949, was $1,119.82, weren't they?

A. Yes, sir.

Q. All right. You had a bad month then in July. You only had, on the 7th of July, a travel check and a salary check deposited, for the $75 and the $225, and on July 25, 1949, an advance check of—for $250 and on July 29, 88-2134, a check for $175 making a miserly little haul of $725. That is the amount for July?

A. Yes.

Q. Will you tell us, please, sir, what that check "advance" was on 7-22-49? Was that payable to you?

A. Yes.

Q. And was it signed by you?

A. I don't know.

Q. What is your best judgment?

A. I believe it was.

Q. Was it countersigned by William Marvin Benson?

A. I guess so.

Q. And by the way, did you have any ledger account there at the—in the books of the BISD showing those advances, where they were all charged in one column against you so you could look at that column and tell how much had been advanced you?

A. Yes, sir. We had a liability sheet in our books with my name on the top and all the advances entered into it and the name given, the name of the person I was paying the account for.

Q. The name of what?

A. The name of the person I was paying that account for.

Q. You were paying the account for?

A. Yes, sir. By that I mean, if I got $250 in my name, I charged it to my account and put the name "Joe Doe" in parentheses as being the person whose account I was paying.

Q. You used John Doe more than anybody else, didn't you?

A. I say John Doe. I mean the name of the employees of the School District.

Q. John Doe was about the only one you didn't write any checks to?

A. We don't have a John Doe in the school. We didn't have it.

Q. Did you take that with you when you disappeared? When the other records disappeared and you went to your office in the Heras Building in the latter part of 1952?

A. No, sir.

Q. Here is one that is almost on the subject of identification. Perhaps you will recall the source of this $175 check, 88-2134. Eighty-eight evidently means some city, and 2134 some bank?

A. Yes, sir.

Q. Do you know from your general banking experience what city 88 is in the Federal Reserve?

A. No, I don't.

Q. Can you tell us from the specific number of that check as it appears on your deposit slip the source of that check?

A. No, sir.

Q. That was the 29th of July, July 29, 1949 that this 88-2134 check appeared, wasn't it?

A. Yes, sir.

Q. Now, on August 3, 1949, you deposited your salary check and it was not until the 22nd that you deposited your travel expense check in August, is that not true?

A. Yes, sir.

Q. And you did deposit a transfer on 8-13-49 of $200, didn't you?

A. Yes, sir.

Q. And on 8-17-49, the first "Texas" check is $150?

A. Yes.

Q. What does "Texas" check mean, please, sir? That is the first one we have had.

A. I believe it is a Texas State Bank check.

Q. That was just a check on the—on somebody else's account but a Benavides Independent School District check?

A. No, sir, I don't believe so.

Q. And on August 24, 1949, a check for $225?

A. Yes, sir.

Q. Did you pay yourself double time that month? You got another $225 check on August 3, 1949?

A. This is no doubt an advance, Mr. Foreman.

Q. Does it say advance?

A. It does not, but I mean—I have reasons to believe it is an advance check.

Q. And on August 30, 1949, currency, $35?

A. Yes, sir.

Q. Showing a total deposit over the month of August, 1949, of $910?

A. Yes, sir.

The Court: Gentlemen, I am going to declare a recess. Court will recess until 1:45.

11-2435 AFTERNOON SESSION—JUNE 10, 1957

The Court: You may be seated, please.

Mr. Foreman: Shall I proceed, Your Honor?

The Court: Yes, sir.

11-2435 DIEGO HERAS,

being the witness who was on the stand at the time Court recessed for lunch on June 10, 1957, resumed the stand at this time and continued his testimony as follows:

11-2435 CROSS EXAMINATION (CONTINUED)

Q. (By Mr. Foreman) Mr. Heras, did you pay yourself two salary checks again in the month of September, 1949? I have reference to salary check 9-3-49 and salary check 9-30-49, both for $225.

A. One of them is a salary check and the other, if it is the same amount, it would be an advance.

Q. Well, then, the same amount would be what?

A. An advance.

Q. By the way, I have overlooked it. There were three of them, all listed as salary checks, one 9-8-49, one 9-17-49, and one 9-30-49, all listed as salary checks for $225 in one month of September. Did you work extra hard that month?

A. I don't—

Q. Find your deposit slip there for 9-8-49.

A. There it is.

Q. Doesn't it say salary check?

A. Yes.

Q. Doesn't it mean salary check?

A. Yes.

Q. That is $225, deposited in the San Diego State Bank by you, Diego Heras, 9-8-49, and that is your handwriting?

A. That is my handwriting.

Q. Now, let's get to 9-17-49.

A. I don't have any 9-17-49.

Q. Let's see. Maybe it was out of place. Is there one back over here anywhere?

A. I don't see it, Mr. Foreman.

Q. Let's see if there is still 16 there. Maybe I've got it in my file.

The Clerk: I went through and marked them at noon, but there were 16 sheets.

Mr. Foreman: That is right, 16. Well, let me see. Over here is the other one, out of place. It is the second one here. I wonder if it would be possible to—I will just put it where it should be. Is this September 17, 1949?

A. Yes, sir.

Q. Does it say salary check, $225?

A. Yes, sir.

Q. Does it say traveling $75?

A. Yes.

Q. Is that Diego Heras?

A. Yes.

Q. Is that your handwriting?

A. Yes, sir.

Q. And that is the same month as the one in which you—I just asked you about, 9-8? Now, then, that makes two, the 9-8-49, the 9-17-49. Now, show us 9-30-49 and see if you paid yourself the third monthly salary, I mean paid yourself your monthly salary for the third time in that month, 9-30-49?

A. It is three times, yes, sir.

Q. Just three times. You worked a lot harder getting

school started. Is that the reason you paid yourself three times for the month of September?

A. No, sir.

Q. Is that an oversight on your part?

A. It is more or less an advance.

Q. Did you say more or less?

A. It is more of an advance than anything else.

Q. As a matter of fact, there is not any month in here you didn't have a salary check. You had one in October, again in November, again in December, didn't you, and we have already got them down here, but this month you had three?

A. Yes, sir.

Q. Well, do you have any mental reservation about these salary checks that—for what month was that a salary on those three you paid in September, the 8th, the 17th and the 30th?

A. It doesn't indicate what month.

Q. But it is bound to have been for one month, since it is a monthly check in each of the other months?

A. Yes, sir. It is for the same month.

Q. I see. That wasn't to pay anybody's notes with. It was purely an oversight or something of that sort, wasn't it, more or less?

A. No. It was—sometimes I would advance the check for two or three months when I had to make payments either on the car or my notes or things.

Q. It all depended on how badly you needed money as to how many times you would write a check for one month's wages, more or less?

A. Well, yes. It depends on my commitments, what I had to pay.

Q. By commitments you mean such person obligations

as you might have or any of your friends might have or your family might have, is that not true?

A. Yes, in this way, that I would either have to pay somebody else's notes or my personal notes.

Q. I see. Or any other commitment, wasn't it, Diego?

A. Yes, sir.

Q. Just whatever you might think somebody needed, you were sort of a Lord Bountiful, using the funds of the BISD, isn't that true?

A. Mr. Foreman, some of these advances were asked of me to make them, either get the money out in my name or advance, and then put it in the bank and pay somebody else's account.

Q. Did Old George Parr make you write them three salary checks to you? Did he tell you to go ahead and write them?

A. Sometimes I would ask him for advance salary, an advance or a note, and he would tell me to go ahead and make it.

Q. I am not talking about sometimes. I am asking about these items. Did George Parr tell you to write those checks to you?

A. I don't remember.

Q. Did D. C Chapa?

A. I don't remember.

Q. Did any of these defendants tell you to do that?

A. I don't remember, but it was a practice to ask either Mr. Benson or Mr. Parr for an advance, and I don't know about those specific three checks, whether I did or not, but ordinarily I would get their permission before getting out checks.

Q. Then William Marvin Benson and you both were parties to this triple pay deal in the month of Septem-

ber, 1949? He knew about it too, is that your testimony?

A. Yes, sir.

Q. Then he didn't care how many times you paid yourself in any given month because he was auditor of the School District, is that right?

A. I don't think he had much to say when I got the permission from my superiors, other than just accept it.

Q. But you are not sure you got permission from anybody here except William Marvin Benson?

A. I don't remember. I might have. I might not.

Q. Isn't it true in September, 1949, the total, including your triple pay, was $950?

A. Yes, sir.

Q. And actually it would have been Marvin Benson's duty, if he had been doing what he was hired to do, was cut that defalcation on your part, wouldn't it?

A. Yes, but I guess it was not anything out of line.

Q. Was he afraid you would tell on him if he told on you?

A. No, sir.

Q. He knew you wouldn't tell on him, didn't he?

A. I didn't know he did anything wrong.

Q. As a matter of fact, at that time you didn't know what was wrong or what was right, did you, Mr. Heras?

A. Yes, I guess I had a pretty clear idea what was right and what was wrong.

Q. Did you know everything you were doing was wrong about those checks? Did you know it was immoral, it was illegal, it was stealing, it was embezzling, it was forging? Did you know all of that?

A. I don't think I knew I was forging or getting anything illegitimate. I would say that each time I needed

money for this and that and would get the consent from my superiors, I don't believe I violated any rules.

Q. And your superior was William Marvin Benson?

A. I would say my superiors were the trustees.

Q. Did the trustees ever know anything about those, as far as you know, those three salary checks?

A. I believe they did. Those three salary checks were listed on the annual report, and I am pretty sure they saw them.

Q. They checked that carefully, each item, and carefully approved it, each member of the school board, didn't they?

A. I suppose so.

Q. Let's get that again. You what? You suppose so?

A. Yes, I believe that either generally, or someone in the —on the board knew about it, either the president or the secretary.

Q. You are telling us now under oath this afternoon, it is your considered judgment that each member of the school board inspected, checked, and knew about all of the items that appeared on these annual reports?

A. Mr. Foreman, I don't know that all the trustees carefully examined those annual reports, but I know either the president or the secretary was—knew about mine. The annual was presented for approval.

Q. Mr. Heras, haven't you sworn three times under oath that you don't believe any one of them ever inspected or checked a one of those annual reports? Haven't you sworn three times under oath just to the contrary of what you swore here?

A. At least one board member knew something about it.

Q. One board member signed it, didn't he? Isn't that all?

A. Yes, sir.

Q. Haven't you sworn each time you have been asked the question about the board members checking the annual reports, haven't you each time you have testified under oath with reference to that, testified you don't believe one of them ever checked a one of those reports?

A. I don't believe I gave that testimony.

Q. Do you want that testimony to stand, or do you want to change it?

A. I repeat my statement that one of the board members signed it and he was the one knew about it.

Q. Was that what you said a while ago, or did you say every one of the board members checked and knew about the checks?

A. No, I don't think all of them knew about it. They might have seen the report, but it was not done in my presence.

Q. You don't think a single one of them ever checked a single one of those reports, and the only action they had was the ultimate signature of Octavio Saenz, as president of the board, signing the back of it. Isn't that the only thing they ever did about one of those annual reports?

A. I don't know.

Q. Did you ever see them do anything else?

A. No, not in my presence.

Q. Getting your deposits for October, and the first one for October 4, 1949, it is a currency deposit for $40, is it not?

A. Yes, sir.

Q. And the second one is for the 7th of October, 1949, a currency deposit of $60?

A. Yes, sir.

Q. And the third one for October 11, 1949, is a currency deposit for $115, is it not?

A. Yes, sir.

Q. And then October 14, 1949, is just a check for $500?

A. Yes.

Q. Was that check payable to you?

A. I guess so.

Q. Was it signed by you?

A. I believe so.

Q. Both as maker and endorser?

A. Yes, sir.

Q. Was it countersigned by William Marvin Benson?

A. I believe so.

Q. Then you deposited your travel check and salary check on October 24, 1949?

A. Yes, sir.

Q. Were you a little late there to sort of cover up those three checks for September? You didn't get your travel and salary check in quite as early as you usually do. Was that because you were afraid somebody at the bank might wonder how many jobs you held at the BISD?

A. No.

Q. And your total for the month of October, 1949, was, as you say, in round figures about $1,015, wasn't it?

A. Yes, sir.

Q. Then on November 9, 1949, you deposited your salary and travel expense check, one of $225 and the travel expense of $75, didn't you?

A. Yes, sir.

Q. And on the 17th of November, 1949, did you have an advance check for $200?

A. Yes, sir.

Q. Now, what is the difference, please, Mr. Heras, in the manner or method of keeping your books or your

computing what those checks are for when you label a deposit of a check on the BISD "Advance check" and when you just put it "Salary check." You called those over in September on your deposit "Salary check." You say you guess they were more or less advance checks. Here is one that really is an advance check. Did you start considering this as an advance after you took the witness stand, or have you always considered it in advance, those three checks for September? When did you first ever consider them as an advance after I asked you about them on the witness stand?

A. No, sir. I knew any amount of money paid me besides monthly checks would be advances. I would classify them as advances even if they were not listed as such on the deposit slips.

Q. They were not what?

A. Listed as advances, but they are really advances.

Q. You mean anything you got stealing you will say it is an advance?

A. Anything I was given besides my salary check would be advance money I was directed to get out of the School District to pay notes at the bank.

Q. Does that go for anything you gave yourself as well as anything you were given?

A. Some of the money that I got through advances covered both my notes and the notes of other employees.

Q. Well, at the time that you had those three September checks written as salary checks, and I am asking that in the light of this advance check on November 17, as you have listed it on this deposit slip "Advance", what was the distinction in your mind at the time you deposited those checks? Did you intend those salary checks to appear as salary, or intend for them to be advances, or intend

to get away with as much money as you could under any excuse you could?

A. Sometimes I would determine the money I would need for this, that and the other, and I would either get one month's advance or two months' advance.

Q. I see.

A. And I admit that I didn't—wasn't quite clear in defining the checks on the deposit slips other than just salary checks. In some cases I was careful to jot down just advance check.

Q. Well, now, the next item, 11-25-49, was just plain currency of $200?

A. Yes, sir.

Q. Do you know where that came from?

A. No, I don't know.

Q. It came right out of your pocket, didn't it?

A. I don't remember.

Q. Then your total for November, the two $200 and the $300 was a flat $700, wasn't it?

A. I guess so.

Q. Well, there was an advance check of $200, a currency of $200, a salary check of $225, and $75 and that was $700?

A. Yes, sir.

Q. Now, we are in December. You had a lot of this, that and the other for Christmas, didn't you? You needed a lot of commitments, I believe you called them, places where you had to spend money. You had more for December than you had for, say, November, didn't you?

A. No.

Q. Didn't you pay yourself—didn't you deposit in this one bank $1,450 in the month of December? Right here? That is what it was, isn't it?

A. Yes.

Q. Now, we'll break that down. 12-3-49, currency $100, is that correct?

A. Yes, sir.

Q. And then you made on the same—by the way, on the same day you put in that currency, you put in an advance?

A. Yes, sir.

Q. Now, did you get that currency over at the Texas State Bank at Alice, and bring it over to—with the check, did you go over to the Texas State Bank at Alice and get that $100 on a loan?

A. I would do that sometimes, but in this case I don't remember.

Q. Do you remember—I didn't ask you about it, but back up there 11-25-49, was that a loan from the Texas State Bank at Alice, that currency for $200?

A. I don't recall, Mr. Foreman. I don't remember.

Q. Now, this was a check, that $600 deposit on December 3, 1949, at the same time you deposited $100 currency?

A. Yes.

Q. And it was made payable to you, the $600, the check was payable to you as payee, was it not?

A. I don't have the check with me, but I imagine it was.

Q. And signed by you as maker?

A. Perhaps.

Q. And countersigned by William Marvin Benson?

A. I don't know. I don't remember.

Q. You called William Marvin Benson your superior a while ago?

A. Well, he was auditor for the School District. He was my immediate superior, put it like that, but whenever we had to make any decisions, we would have the board pass on them.

Q. Was he a superior forger also, or a thief?

A. I don't know.

Q. Did he steal more than you did?

A. I don't know.

Q. You tried to keep him from it, didn't you?

A. I don't remember, Mr. Foreman.

Q. Your salary check went in on December 10, 1949, along with the travel expense on that deposit, $225 and $75?

A. Yes, sir.

Q. Then again, on Christmas Eve, another check—no, currency for $200?

A. Yes, sir.

Q. And a check for $50?

A. Yes, sir.

Q. That was very modest for you to give yourself on Christmas Eve, wasn't it, Diego, December 24?

A. I don't remember that, Mr. Foreman.

Q. Was that another check you wrote yourself on the BISD account?

A. I don't recall. I don't recall whether it was the proceeds of a note or a check, Mr. Foreman.

Q. But here is one we do know, 12-31-49, you got your commission check from T.Y.P. for the year 1949?

A. Yes, sir.

Q. That removes this explanation back in April of the $200 item, doesn't it?

A. I don't know.

Q. Weren't we talking about, on the 29th of April, this morning, item 4-29-49, check for $200, less cash

$100, didn't you say that might be your Thomas Y. Pickett check?

A. Yes, it could have been Mr. Pickett's check for $200.

Q. Might have been a check for '48?

A. I don't know.

Q. Didn't he pay you within each year for that year so as to keep his books straight?

A. The best I recall is that he didn't pay me immediately after I did the work. This one case where he paid me in December, the 31st, that was about three months after the tax roll was completed.

Q. But within the year of 1949?

A. It was within the year of 1949.

Q. Didn't he pay you for 1948 within the year of 1948?

A. I don't recall.

Q. Then your total deposits in this one bank were $12,372.30, wasn't it?

A. Yes.

Q. And this $225 was $250 less a $50 deduction or in 1949 do you recall now from the deposits that you received only $225 salary. What was your salary, gross salary before tax deduction?

A. It was $225 or $275. $225 I think it was.

Q. Was that your gross salary?

A. Yes.

Q. And the School District board paid your income tax too, your withholding tax, or did they know they did, if they did?

A. No, sir, I don't recall.

Q. You don't recall whether you told them they were paying your tax?

A. No, I don't recall. I don't believe I paid any income tax, any withholding tax on the $225, with six dependents.

I don't think I fell in that category. I don't know. That is the best of my recollection.

Q. But on $12,375.32 you would have owed some income tax, if anything a good many more dollars?

A. If I had that much income, if I had received that much money, but it was in different—through different classifications, and not all that $12,000 was my income.

Q. But if it was, you would have owed a lot more even with six dependents?

A. Oh, yes.

Q. You know the United States District Attorney is hired for the prosecution of income tax evasion, if photostat copies of these things you hold in your hand—

A. Yes, sir.

Q. And you know if any of these items are held to be income, then you would be subject to being prosecuted for income tax evasion, don't you?

A. I think so.

Q. And you would very much like to avoid that, would you not, sir?

A. I tried to explain, to the best of my knowledge, just how this money was given in my name. I have reasons to believe not all this money was mine, other than the—my regular salary.

Q. I know you—because you swore to it, I know you paid $250 in notes. I don't know what year you paid them, do you?

A. No, I don't.

Q. You don't even know whether it was in this year that you paid Carrillo's note for $150 and Sanchez's note for $100. You don't know that even happened in 1949, do you?

A. No, I don't recall offhand.

Q. But my question was, wouldn't you like to avoid being prosecuted for income tax evasion?

A. Yes.

Q. And you know that it is within the power of the District Attorney for the Southern District of Texas to submit this to a grand jury for consideration, don't you?

A. Yes, sir.

Q. You know that up to now it hasn't been presented, or you haven't been indicted, don't you?

A. No, sir.

Q. You don't know it, or you know that you haven't been?

A. I don't know that I have been.

Q. You know you haven't been, don't you?

A. Yes, sir.

Q. And you feel pretty free with Mr. Wilkey, don't you?

A. Mr. Wilkey?

Q. Aside from wanting to please him with your testimony, you feel very cordial toward him, don't you?

A. I try to be like that with everybody.

Q. Don't you feel more so with him than anybody else in this courtroom?

A. I have worked with him in this case but in being cordial, I try to be cordial with everybody.

Q. Haven't you made little social visits with him, little buddy-buddy visits, not associated with the case?

A. I have been in the office to see him about this business and still other personal visits.

Q. Other personal visits?

A. Yes, I come here sometimes and I see him.

Q. Will you tell this jury approximately how many just personal visits that had nothing to do with any

phase of this case you have made with Mr. Wilkey in the last three years?

A. I don't know how many times.

Q. Numerous ones, haven't you?

A. No, I come here once or twice a month, that is all.

Q. You come here once or twice a month? For how long a period of time have you been doing that?

A. I can't remember. Sometimes I stay away three or four months.

Q. I beg your pardon?

A. Sometimes I stay away three or four months without coming to the court.

Q. Then you make it up once or twice a month?

A. It averages about once every month or so.

Q. And that has been going on for how many years?

A. I don't know, Mr. Foreman. About three years.

Q. And do you always—by the way, do you all ever go out together anywhere else?

A. No, I don't believe we have ever been out.

Q. What other assistants are you on—I mean what assistants, if any, or those who have been, first Mr. Jim Dowd—he was in charge of this case, at least subject to the direction of Mr. Wilkey at first back yonder in the '53's and '4's before it was ever decided to return an indictment, wasn't he?

A. I don't remember.

Q. And did you or not visit with him here and elsewhere?

A. I met Mr. Wilkey on the street sometimes. The last time I saw him, and on Main Street, I don't know, it must have been—

Q. I am not going to ask you what either one of you were doing, but at any rate did you go over there with him?

A. No.

Q. I am asking you now about assistants. Have you met Mr. Dowd at various places in Texas besides here?

A. I don't recall definitely. I think I met Mr. Dowd in San Antone one time.

Q. Have you ever visited socially with Mr. Wilkey in Benavides or he with you?

A. No, sir.

Q. Has he been there?

A. I don't know.

Q. Mr. Dowd?

A. No, I haven't seen him in Benavides.

Q. Did you see him in Alice or Duval County, Jim Wells County or Duval?

A. No, I don't believe I have.

Q. Didn't you see Mr. Dowd over at the headquarters of the Freedom Party at the Alice Hotel in 1954?

A. No, I don't believe so.

Q. Were you over there?

A. I don't recall.

Q. You don't recall going over there every afternoon, practically every afternoon, even Saturdays and Sundays? You don't recall going over to the Alice Hotel?

A. In what month?

Q. 1953 and '4, when the great migration of prosecuting attorneys, Rangers, State auditors, assistant Attorneys General, post office inspectors, Federal Bureau of Investigation agents, Internal Revenue agents, when they took over the Alice Hotel and set up headquarters?

A. I did go to Alice every other day the first part of 1954.

Q. That is what I was talking about. Didn't you go to the Alice Hotel?

A. Yes, sir. I've been there many times.

Q. Didn't you go almost every afternoon?

A. No, I don't believe I went there every afternoon.

Q. Was there a systematic reason for your going every other day?

A. No, I don't believe so. It is just that is the way it happened, if they needed me and I was called, but as to the regular intervals of time, whether daily or every other day I don't know, but I am inclined to believe it was every other day for about two weeks.

Q. Just two weeks?

A. Yes, in 1954, February or March.

Q. And you didn't see Mr. Wilkey down there then?

A. No, I didn't see Mr. Wilkey.

Q. Do you know whether he was there or not?

A. No, I don't know.

Q. You will need the last one of these to be complete, I guess (indicating documents). Let's see if we have got them in order again? I may have messed them up myself. By the way, you realize there is a possibility somebody might look with a little suspicion on this as income subject to being paid as taxes, as basis for the payment of income tax, don't you, Mr. Heras?

A. No, I don't.

Q. You don't believe anybody could possibly think you would be liable for any more than the $225 a month, which you had exemptions to cover?

A. I don't know.

Q. Let's examine the month of November. You received—you made a deposit—I mean not November. January of 1950. You made a deposit on January 6, 1950,

of your regular salary check and expense check, didn't you?

A. Yes, sir.

Q. One for $225 and one for $75?

A. Yes.

Q. And you made a deposit of what is listed there as an advance check?

A. Yes, sir.

Q. By the way, were these advances ever paid back?

A. I don't believe so.

Q. Do you know whether or not you advanced yourself approximately $64,000 above—from the BISD?

A. This money advanced to me was not for my personal use. Some of it was. A good percentage was to pay somebody else's notes.

Q. Some of it was and some of it wasn't? Can you look at those deposit slips and tell which was and which wasn't?

A. No, sir.

Q. Can anybody else?

A. I don't know.

Q. Don't you think Mr. Niendorf and Mr. Gromatzky would take a rather dim view of accepting your word for the fact that it wasn't for you if you couldn't show or distinguish or establish why it wasn't for you?

A. I don't know.

Q. All right. Then on the 25th of January, 1950, that advance check was $200, making a total for January, including the $225, the $75, and the $200 check, of $500, wasn't it?

A. Yes, sir.

Q. But your Christmas bills commenced coming in, and you made a much bigger deposit for February. You had $1195, didn't you?

A. I did that?

Q. It is hard for you now. I shouldn't have taken that advantage of you. February 1, 1950, salary check and expense check, $250 salary and $75 traveling. Then you come along—

Mr. Wilkey: Pardon me. How much did you say for salary?

Mr. Foreman: It says $250 here. You raised your salary here.

A. If I did, I made it on the direction of my superiors.

Q. You mean Mr. William Marvin Benson?

A. I believe that every time I got an advance, we would consult our superiors about it.

Q. You mean he—

A. An increase in salary.

Q. You mean you would consult him, and he would consult you?

A. No, I imagine that I would go around getting this advance by either discussing it with Mr. Parr or someone else. I don't think it was done out of my own initiative.

Q. Are you sure it wasn't?

A. I am positive it wasn't.

Q. There wasn't anything to keep you from doing it if you wanted to, was there?

A. I imagine as far as wages are concerned, I think that we would have to get the consent from other people.

Q. Go ahead. I didn't mean to interrupt you.

A. I am inclined to believe the increase was approved by the board or other superiors of mine.

Q. You mean Marvin Benson?

A. Mr. Benson, Mr. Parr, Mr. Chapa and the rest of them.

Q. What was it you told this jury the other day about George Parr not having an official job in that School District, and exercising influence without any authority whatever? Did you tell this jury that?

A. I don't know that he had any official capacity by virtue of commitment of the board. That is, I never saw any action of the board on the minutes whereby he would be empowered.

Q. Are you attempting by that group of words to reserve or to conceal or to convey some idea to this jury George Parr did not have an official job, position, or responsibility as far as the Benavides Independent School District Board of Trustees was concerned? Is that what you mean to say, or are you using that so as to avoid being caught in a falsification or false swearing or perjury? Which of the two is motivating you in that last answer? I ask you straight out, did George Parr—

Mr. Wilkey: We object to that long question.

Mr. Foreman: It is duplicitous, but now I am asking a question, right now. This is the beginning of it.

Did George Parr have an official responsibility on and with the BISD Board of Trustees? Did he or not?

A. No.

Q. Now, did you or not swear directly the opposite of that to an Internal Revenue agent, to-wit, did you swear that he did have such a responsibility?

A. I don't recall.

Q. Well, we'll just see. I have reference to Mr. W. H. Niendorf, and the time fixed is December 11, 1953, at

1:03 a. m., in Room 577-A, Post Office Building, Office of the Special Agent, Intelligence Division, Internal Revenue, San Antone, Texas. Do you recall being there?

A. Yes, sir.

Q. Do you recall being asked certain questions—first, did you hold your hand to the Almighty and swear to tell the truth?

A. I believe I did.

Q. And after you had been asked the questions and had made the answers, were the questions and answers typed up in question and answer form, and did you again hold up your hand and swear what you said was true?

A. Yes.

Q. And are you this Diego Heras whose name is signed right here?

A. Yes, sir.

Q. Now, then, Mr. Heras, I turn to Page 3, and see if I read every word and syllable just as Question 24 was asked you and the answer.

"Question 24: Did Mr. George B. Parr have any official connection with the operation of the School District while you were working for the District?

"Answer 24: Yes, sir."

Were you asked that question and did you give that answer?

A. Yes, sir.

Q. "Question 25: What job did he hold?" and did you answer, "Answer 25: He was a supervisor for the financial department of the School District," financial department being capital letters, is that true?

A. Yes, sir.

Q. And "Question 26: How did he get his job?

"Answer 26: The board appointed him to that office about the year 1950."

Did you make that answer under oath to Mr. Niendorf?

A. Yes, sir.

Q. Had you forgotten that when you just swore he didn't have any such official job?

A. I think I have answered that. I never saw any official actions of the school board. However, he presided over the board meetings but I don't know whether it was official, or legally. He was there and we took orders from him.

Q. We are getting to when he presided over the board meetings later, but right now I am asking about whether you surreptitiously and intentionally and deliberately attempted to dodge to this jury as to the official connection of George Parr as to the Benavides Independent School District?

A. No.

Q. I asked you one question, if he had a job, and you said, "I never did see any minutes on it." Isn't that what you said? That wasn't the answer, but what you intended to convey was since you hadn't seen any minutes on it, he didn't have any. Isn't that what you intended for this jury to believe when I asked you that question?

A. What I was attempting to convey is that to my knowledge his official capacity, as far as being recorded, I never saw it. He did act as an official, yes, but I never saw any commitment by the board.

Q. You say as far as being recorded, you never saw any?

A. Yes.

Q. You said to Mr. Niendorf the board appointed him.

A. That was a belief, you know, that perhaps the board ordered him, but I never saw any action of the board.

Q. You mean you misinformed Mr. Niendorf?

A. I don't believe I have misinformed. That is the way I got the information.

Q. Were you confused when Mr. Niendorf questioned you?

A. I wasn't exactly confused, but I had a frame of mind as to the answers then. In that particular answer, I am pretty sure I meant that he acted as an official of the School District.

Q. You state he acted as an official, and in answer to Question 26, you said the board appointed him?

A. Yes, sir.

Q. When I asked you about it, you said "I never saw the records," meaning that the recording—who is responsible, was, to record the minutes at that time in 1950, Mr. Heras? Wasn't it yours?

A. No, sir.

Q. Then because you didn't do your duty and the board did its duty, you want to leave the impression Mr. Parr was improperly forcing his attentions on the board?

A. No, I don't want to mislead the jury. The only thing is I want to make a clarification of my statement, the way I preserve them.

Q. Well, you did—you do know that the board appointed him financial supervisor, and you know that they did it, don't you?

A. I just think they did. That is all. I can't affirm that they actually did.

Q. You can't affirm they actually didn't either, can you?

A. Well, my memory, as far as my right—

Mr. Wilkey: Your Honor, we ask that the attorney take his seat and stop intimidating the witness.

Mr. Foreman: I don't mind.

Do you feel intimidated, Mr. Heras?

A. No, sir.

Q. As a matter of fact, you swore affirmatively that the board officially appointed him financial supervisor when you made that affidavit to Mr. Niendorf, didn't you?

A. I made the statement, but I didn't say that he was actually recorded. What I had in mind when they asked the question "Did he have any official capacity," I said yes because he countersigned the checks and did practically all of the collecting.

Q. He didn't start countersigning the checks until in June of 1950, did he?

A. Yes, sir. About the middle of 1950.

Q. And he was appointed financial supervisor in early 1950, wasn't he?

A. I don't recall.

Q. The question to which you answered "The board appointed him to that office about 1950," was Mr. Niendorf's question, "How did he get his job," isn't that true?

A. I don't recall, Mr. Foreman.

Q. Who kept the minutes in 1950?

A. I did.

Q. Where are they?

A. I don't know.

Q. Are you telling this jury that the minutes for 1950 would not show that George Parr was appointed financial supervisor?

A. It was not shown then.

Q. Who failed to show it, you?

A. If I did, I was directed to do so.

Q. If you did, you were directed to do so?

A. Yes.

Q. Were you directed to do so or not?

A. I don't recall.

Q. Then if you did it, anything you did was not your fault, it was George Parr's fault?

A. I was just told to record the minutes as they were held, and that was all. I was not supposed to take anything from or add anything to it. I am pretty sure when they read the minutes over and signed them, they would have noticed any difference in my typewritten variation.

Q. As to the meetings George Parr presided over, the only time he ever presided over a meeting was something that had to do with the financial affairs of the District, such as school board election or letting of contracts?

A. Yes, sir.

Q. And that occurred in the course of the three years, 1948, 1949 and 1950, about how many times?

A. I don't remember.

Q. Wasn't it less than half a dozen times, to-wit: wasn't it three times?

A. I don't recall because he would be there for either bonds or schoolteacher contracts or any other important matters.

Q. And only when they dealt with the financial affairs of the schools? That is the only time he ever attended?

A. I don't recall. I don't know.

Q. And he was paid $200 a month for that particular school board and you wrote the check, didn't you?

A. Yes, sir.

Q. And you knew that all of the time you were saying to Mr. Wilkey here last week that he didn't have any official connection with the school board, didn't you?

A. I don't know.

Q. I beg your pardon?

A. I don't know that I said it that way, but I have maintained right along, you know—I want to make a difference between official recorded commitments.

Q. What does the word "commitment" mean as you use it in that sentence, to you, so that we may understand each other?

A. Commitment would be an action either by a man or company or board of trustees or board of education.

Q. Would the employment of George Parr at a fixed salary of $200 as financial supervisor by the Benavides Independent School District be a commitment as you use the term?

A. I believe so.

Q. Then you would know of that commitment, wouldn't you?

A. It was done, but whether it was authorized by the board, I don't know. I don't think so, however, the money that was made out payable to George B. Parr for $200 was not classified as wages to my best recollection. It was rent, I think.

Q. It was classified as rent?

A. I believe it was, the best I recall. The best I recall, the classification for that disbursement was for rent.

Q. Rent on the office?

A. Yes.

Q. Then his work as financial supervisor was without pay?

A. I don't know.

Q. Please look at your checks for the month of February, which we have just gotten the total on. We will break it down, to-wit: $1,195 for the month. The first was a de-

posit for the month of February, 1950, of your salary check for $250 and travel expense of $75. That is what caused this diversion or digression. You do not recall the occasion of your salary being raised or any discussion of a superior—I am not questioning the value of the salary but only as to what your memory is. Do you recall the occasion of that salary being raised?

A. Not distinctly.

Q. You do not know whether you did it, whether Mr. Marvin Benson did it or you did it?

A. I am inclined to believe that I consulted the superiors about raising my wages.

Q. The $12, 375.32 for the year of 1949 had not been sufficient for your commitments?

A. No, sir, I don't believe so.

Q. Then on the 3rd of February, you deposited currency, greenbacks, of $190?

A. Yes, sir.

Q. On the 6th of February, 1950, a deposit of greenbacks, currency, of $500?

A. Yes, sir.

Q. And on the 23rd of February, 19500, you deposited currency of $160?

A. Yes, sir.

Q. Where did the items of $190 on the 3rd of February, $500 on the 6th of February, and $160 on the 23rd of February come from, Mr. Heras?

A. That $500, I believe, came from the Texas State Bank.

Q. You believe it did?

A. I think so.

Q. Did you cash some fraudulent, fictitious, spurious Benavides Independent School District checks for it?

A. No.

Q. You borrowed it?

A. I believe it was borrowed, yes.

Q. $500 was borrowed, and of course it was borrowed that same day, wasn't it?

A. Well, not necessarily. It could have been a difference in days.

Q. How long a difference could it have been?

A. Well, I don't know. It could have been two or three days or five days.

Q. Not more than that? At least within five days? That would have been either the last—between the 1st and the 10th of February or the 1st and 12th of February you borrowed $500, that is 1950, from the Texas State Bank at Alice? Is that your sworn testimony?

A. I say it could possibly be a loan from the Texas State Bank.

Q. Is there any difference in your mind on a loan, as you use the word, and borrow, as I use the term?

A. No, it is the same thing.

Q. Well, then, it is your testimony and you are telling this jury now that sometime between the 1st of February and the 12th of February you borrowed $500 from the Texas State Bank at Alice?

A. It is very likely.

Q. If you didn't, you just don't know where that came from?

A. I don't remember distinctly just where it came from.

Q. But you did tell us last Friday morning that all of the funds you received, except $14 a month rent for about three months of the year, $200 that you got from Thomas Y. Pickett, all over that came from the BISD, didn't you?

A. Yes, sir.

Q. Then if that wasn't money that you borrowed from the Texas State Bank, it is money you stole from the BISD, isn't it, Mr. Heras?

A. No. I didn't steal any money from the School District.

Q. You didn't lower yourself to violate the law in 1950?

A. I think it was either an advance from the School District or a loan from a bank.

Q. It would have been immoral to steal, and that is why you wouldn't have stolen it, is that right?

A. No. I know it wasn't stolen.

Q. What?

A. I know it wasn't stolen.

Q. Well, do you know it wasn't because it was contrary to your sense of morals and value to steal?

A. Well, I know it is immoral to take anything, to steal anything, but about getting this $500, I am sure it was either a check drawn in my name or either I got the money from the Texas State Bank. It was a common practice for me to do that.

Q. Is it, Mr. Heras, is the reason you know you didn't steal this money because you just didn't steal in 1950, or you just can't remember stealing it, or what was the reason you say you know you didn't steal it if you don't know whether you borrowed it or not? It was bound to come from the District if you didn't, and if it came from the District and you didn't borrow it from the bank, you stole it, didn't you?

A. I am pretty sure a big amount like $500 would have to be a check. If it was from the School District, I would have to get either Mr. Benson's approval or somebody else's.

Q. You mean if you stole it, you and Benson both stole it?

A. No. If I was advanced $500, it would have to be okayed. I didn't have the power to just write the check out to me for $500 without consulting anybody.

Q. That is not a check, Mr. Heras. That is currency.

A. I know it. I know it is currency.

Q. You mean if you stole it, you didn't steal the money, you stole a check and cashed it?

A. I wouldn't put it that way.

Q. I am sorry, but that is the only way I know how to put it.

A. It is not that way. I don't believe it is. I know it isn't. Money like that, I was given that money either by the bank to a note or through an advance check, or to pay somebody else's account but it was not stolen.

Q. Let me see if can break that down. I was given that money by the bank or by advance—what kind of check?

A. It was by the School District, it would be a check, an advance, and if it was—if I got the money from the bank, I would have to sign a note.

Q. Then if you—if there is a liability ledger of the Texas State Bank at Alice and it does not show a loan to you between the 1st and 12th of February, 1950, it is your considered judgment that that $500 currency you put in the bank on the 6th of February, 1950, was the proceeds of a check of the Benavides Independent School District, is that right?

A. That could be right, yes.

Q. And you, of course, would have at that time been the author of the check, would you not?

A. Yes.

Q. And William Benson would have been the countersigner, would he not?

A. Yes, sir.

Q. Now, can you give any explanation, if that was a check and was not a spurious, fraudulent or fictitious check, that would have been apparently so to a teller of a bank, why you would have gone and cashed the check to get the currency to make the deposit instead of depositing the check?

A. I don't know.

Q. It surely would have been a cumbersome, roundabout way to accomplish the depositing of the money in the bank, would it not, to have done that, go cash it, bring it in somewhere else, and bring the cash back to the bank? But on the other hand—isn't that true, it would have been a rather roundabout way to accomplish a bank credit?

A. I don't know.

Q. Mr. Heras, on the other hand, if it was apparently a fraudulent and fictitious check, and you could get somebody else to cash it for you and bring you the currency, it wouldn't have been, to a man of your apparent means, anything unusual in your making a $500 deposit, was it, in currency?

A. I don't know whether it is a check or a loan or an advance, Mr. Foreman.

Q. All right. We will pass on to the next item, February 23, 1950. We have currency again in the amount of $160. Did you make another loan that day at the Texas State Bank?

A. No, sir. I don't know.

Q. Do you have any idea whatever as to where that $160 currency, represented by the deposit of February 23, 1950, came from?

A. No, I don't.

Q. On that same day, you put in a $20 check, didn't you?

A. Yes, sir.

Q. Do you know whose check that was?

A. No, I do not.

Q. Now, for the month of March, 1950, you made your regular salary check and travel expense check deposit on the 1st of March, didn't you?

A. Yes, sir.

Q. And here is another expense check. Did you blow out a tire? You got $125 in expense checks here for 3-10-50. What was that for?

A. I don't know. I don't recall, but it seems to me that some of this advance or expense checks that are bigger than $75 was for the use in going either to Corpus or Austin, Texas.

Did you go to Corpus or Austin, Texas on March 10, 1950, if you recall?

A. I made several trips to Corpus Christi around the first quarter of each year. I would stay three or four days at the hotel in Corpus to go over the figures with Mr. Pickett. In those cases, I acquired a little more than $75 traveling expense.

Q. And how far is Corpus from Alice?

A. It is in the neighborhood of 70 miles.

Q. Seventy miles?

A. Seventy or 75.

Q. And you went in that school-supported Oldsmobile?

A. Yes, sir.

Q. And that—by the way, did you or not, in addition to the $75, charge your gas and oil to the BISD?

A. Sometimes, yes, sir.

Q. What do you mean "sometimes?" Didn't you always. Do you ever recall not doing so?

A. Yes, being away on school business either to Austin or Corpus, you know, I had to use my funds to get the gasoline.

Q. Use your what?

A. My funds. My money.

Q. You would forget your credit card?

A. I don't have a credit card. We did have a credit card, but I didn't use it outside of the county. Most of the time, I paid cash for it.

Q. Then you got all your gas and oil as long as you bought it in Duval County? If you bought it elsewhere, you paid for it yourself?

A. Yes, sir.

Q. On these trips you made to meet Mr. Pickett at Corpus, the 70 miles, generally you made that every quarter or just the first quarter?

A. I would come to Corpus every time he needed me. Sometimes it was the latter part of the year, sometimes about the middle.

Q. Of course, you were working for Thomas Y. Pickett then, weren't you?

A. I was working for the school?

Q. Wasn't Thomas Y. Pickett paying you?

A. Yes, he was paying me for doing the tax roll.

Q. Did he also pay you to come over, and pay your expenses when you came over to Corpus?

A. He would call me up, and I would come to Corpus using my car, and I would stay at the hotel three or four or five days.

Q. Did he pay your bill?

A. Sometimes I pay it myself.

Q. Do you ever recall paying it a single time?

A. Yes, sir.

Q. When?

A. I don't recall.

Q. On one of those Thomas Y. Pickett trips?

A. Yes, sir.

Q. Actually the Thomas Y. Pickett contract called for him to come over to Benavides, didn't it? Was there anything in the contract provided you would meet him in Corpus?

A. I don't think there was any specification in this contract.

Q. Then in going over there, you went there at the convenience of him and to save him the inconvenience of coming to Benavides?

A. I guess so.

Q. And that was right, and he paid your expenses?

A. I don't recall that he paid my room and board bill. I think that I paid all the bills.

Q. At any rate, you didn't stay any longer than four days because on the fourth day you were back making another currency deposit of $295, after that March 10 deposit of an expense check?

A. That was four days after?

Q. Yes. March 14, 1950, you deposited currency of $295.

A. Yes, sir.

Q. And do you know where that came from?

A. No, I don't.

Q. You haven't any idea?

A. No.

Q. And on March 20, 1950, you wrote another check on another bank because it is called here transfer?

A. Yes, sir.

Q. And whenever you did that, wrote something on the Texas State Bank account or the Merchants account, or any of your Laredo accounts, you always put transfer on the deposit slip, didn't you?

A. Yes, sir.

Q. On March 20, 1950, you got another advance check of $210?

A. Yes, sir.

Q. Here is an item of $37.44 that you might be able to identify, F. Vaello Puig, $87.28 less cash $49.84. Do you know what that was for?

A. No, I don't recall.

Q. Mr. Puig is a taxpayer in the Benavides Independent School District, isn't he?

A. Yes, sir.

Q. Do you reckon that is a check in payment of Mr. Puig's—by the way, he is Joe Vaello's father, isn't he?

A. Yes, sir.

Q. And that could have been a check in payment of F. Vaello Puig's taxes?

A. No, I don't think so.

Q. Were you doing any business with F. Vaello Puig in March of 1950, that you recall?

A. No, I don't recall.

Q. Then that advance check, do you have any other explanation for it than you have of any of the other advance checks, that $210? Does this odd amount suggest anything to you?

A. Yes, I believe that odd amount is perhaps, it could be one of those notes that I pay at the bank. Money given me for that same purpose. I don't know, but I believe that is what it is.

Q. The total for March was $1,092.44?

A. Yes, sir.

Q. Could you explain to us how those advances were given to you and just exactly how you paid those notes, because I am confused, frankly?

A. The advance—

Q. The advance, it is your statement that—did you tell us that those, meaning that the reason for advances was that whenever you had any other commitments or obligations to meet, that you were—would get an advance?

A. Yes, sir.

Q. Well, in other words, whenever you owed any money for anything, you would get an advance whether personal or otherwise, didn't you?

A. No, I think most of the commitments for which I was advanced money was with the bank. A good many of those employees would get money from the bank, and I would co-sign the note with them.

Q. Did you put on those checks that you got for advances how many—by the way, everybody that you ever paid a note for, you would co-sign. There would be somebody you would sign a note with?

A. Yes.

Q. You would appear as co-signer, co-surety on the note?

A. Yes, that was a common practice, Mr. Foreman. Employees—I want to make this explanation. Employees of the School District would come to the office to see somebody about getting an advance, and they would either go to the bank or the School District for an advance or loan. When they had to go to the bank either to Mr. Donald or Mr. Palacios, I would be asked if it was all right to advance that man so much money or to verify he was working for

the School District, and when I verified he was an employee, he would ask me if it was all right—they would ask me to come and sign their note, which I did. Many of the employees were steady on the job, and as an accomodation to them, I would either advance from the School District or co-sign the note for them at the bank.

Q. You said either/or. I want to know if every time you did whatever you did, assume the responsibility for some employee's note at the bank, if you signed the note with them or not? Did you or not?

A. Yes, sir.

Q. You don't want to change that? You are not reserving that? You know what you said, and that is what you want to stand, is that correct?

A. Yes, sir.

Q. You understand, Mr. Heras, that the bank's records will show any notes you signed, don't you, or had you thought of that?

A. I don't know that the ledger would show the co-signer.

Q. You don't? Now, now that you do now it, do you want to change your statement?

A. No, I don't want to change my statement.

Q. All right. Tell this jury how many people you signed notes for? You have told us Carrillo and Sanchez. Please call off and be sure you recall the ones you signed notes for, and at what banks you signed them.

A. I don't know exactly the number of notes of people—

Q. Not the notes, the people.

A. I know there were several people connected with the School District I co-signed the notes for them, and I also advanced money to pay those debts.

Q. Mr. Heras, my question is not how—you have gone through that to where I think I may understand it, what you mean about signing notes, but I don't know who you signed them for, and that is my question. Who? W-h-o?

A. I don't remember. Lots of people, lots of employees.

Q. Lots is more than two, and I have only two so far.

A. I can't recall the other names.

Q. Do you know a single person other than Carrillo or Sanchez you ever signed a note for?

A. Yes, there were several other people, employees of the School District. I don't recall the names right now, but they were connected with the School District, and I know of my own knowledge that I either co-signed the notes with them or was instructed to pay their debts off, I can't think of their names right now.

Q. Does that mean you are now saying you paid off some notes you didn't co-sign? Is that a new wrinkle you are injecting into your testimony for the first time?

A. Yes, some of these notes were not signed by me, but I was directed to go ahead and pay them.

Q. I see. What you swore to less than four minutes ago is not true, but false?

A. No, sir. I don't believe I have misstated anything.

Q. You wrote the checks for the annual reports for the years ending 1950 and 1951?

A. Yes, sir.

Q. It should have the names of every employee of the BISD in it, shouldn't it?

A. Yes, sir.

Q. You should be able to sit down here and use this and pick out the names of anybody that you signed a note for, shouldn't you?

A. Well, I can more or less see who I co-signed the

notes with. I don't have the notes with me, but I can more or less tell from the report people I know.

Q. You mean now that you can tell from your memory or by looking at this you can tell from the names?

A. I would be more in a position to say when I look at the annual report. I couldn't quite tell just how many people I signed notes with, but I can verify the names on that report as being employees of the school District and perhaps refresh my memory as to who I signed those with.

Q. Will you undertake to do that, for our benefit, either at recess or this evening, so that you may testify here under oath whom you signed notes for other than Ezequio Sanchez and Carrillo?

A. I am looking on a schedule right now showing different disbursements made out to me as regards salary and advances and loans and what have you.

Q. Are you doing that for me, or are you doing that for someone else?

A. I think you instructed me to do that, and I am doing it right now.

Q. I asked only for you to find where you were made advances so we could get to it. I didn't ask for salary, but advances. It shows where there are advances in here?

A. Yes, sir.

Q. That is what I asked you to find for the years 1950 and 1951. While you are doing that, you have to go through and look at it page by page?

A. Yes, sir.

Q. You are likewise looking at the same pages you would be looking at to refresh your memory as to people you endorsed notes for. Couldn't you do both at the same time?

A. I don't know whether I will be able to or not.

Q. Will you do the best you can in that direction?

A. I'll do the best I can.

Q. Thank you, sir. Mr. Heras, we get to April 3, 1950, at which you made a deposit of $250 plus travel expense of $75, and it looks like you made a boo-boo here in your favor because you made a separate travel expense deposit on April 14, 1950, didn't you?

A. Yes, it was eleven days after.

Q. Well, it was for the same monthly expense. Was that travel expense to go with one of those monthly salary checks there in September?

A. I don't think so, Mr. Foreman.

Q. I see. Then maybe you can tell us what this check, this travel expense check on the 14th is for when you had just written yourself and deposited one eleven days before?

A. That is perhaps one of those trips outside of the county that I made either to Corpus or Austin.

Q. Or Nuevo Laredo?

A. No, I don't think so, no.

Q. Well, you did go to Nuevo Laredo and Monterrey occasionally, didn't you?

A. No, I go there very seldom.

Q. Well, now, did you go there in April of 1950?

A. I don't recall.

Q. Well, to help refresh your memory, do you remember whether you and Nina Palacios went there in April of 1950—Nina Palacios, Mrs. Wagner—on April the 19, 1950 you made a deposit, did you not, of the Benavides School District check for $250?

A. Yes, sir.

Q. Will you tell us what that was? It doesn't specify here, just BISD.

A. I don't know, sir. But I imagine it was an advance.

Q. It might have been a check you cashed down there at the bank for—at the offices for somebody else, might it not, out of funds on hand or petty cash or something?

A. No, sir, it is a BISD check.

Q. That means it is drawn by the BISD, it doesn't mean payable to the BISD?

A. No, sir.

Q. But it doesn't show advance like all the other advance checks do, does it?

A. No, it was not classified as such. I think this deposit was done at the bank there. It doesn't look like my handwriting, and he probably just jotted down BISD.

Q. It might have been another salary check, since you got two expense checks for that month and your salary of $250, and you hadn't had a monthly check since the 3rd of the month and this was 16 days later. It might have been another salary check to go with that second travel expense check you had inadvertently written, to keep the books straight?

A. No, I think this $75 is just travel expense, and this $250 was made a few days after that. I think it is more of an advance than anything else.

Q. You think it is more that than anything else?

A. Yes.

Q. That is a charitable way to say it, at any rate. You have got two 250's and two 75's, haven't you?

A. Yes, sir.

Q. So that really would get you all the way through May if you hadn't written one on May 2nd, wouldn't it?

A. I don't know.

Q. Well, is there any other explanation of it except you inadvertently and unintentionally overpaid yourself, Mr. Heras?

A. I were paid—all I can say is that this $250, no doubt, was an advance. It happened to be the same amount of my wages.

Q. The same amount. That was purely coincidence. You had more imagination. If you had intended to steal, you would have made it for a different amount?

A. I don't think it is.

Q. You were honestly doing everything you could to keep from being dishonest in writing those checks?

A. I guess so.

Q. On the 26 of April, 1950, you deposited currency of $100?

A. Yes, sir.

Q. And only three days later, you deposited currency again, on April 29, 1950, of $100, didn't you?

A. Yes, sir.

Q. Making a very modest total of $850 that you and Mr. Marvin Benson paid yourself for April, isn't it, $850?

A. Yes, sir, including the advances and travel checks.

Q. And including a couple of unexplained currency items of $100, is that right?

A. Yes.

Q. Well, you had a little heavier hand. You have got $1,012.81 in May, didn't you?

A. Yes, sir.

Q. And that is broken down by the May 2, 1950 deposit of the salary check and the expense check, the travel expense, of $250 and $75 as one deposit?

A. Yes, sir.

Q. How did you always happen, Mr.—do you know why you always put those in separately and on an individual day of the currency, an inexplicable or unexplained currency deposits? Did you want to keep your wages clear of being fouled up with all your chicanery?

A. I always made out a deposit in that manner, showing the salary check and the travel expense check. All other checks that I have got here were either listed as currency or advance or just checks.

Q. But you had no mental reservation as to keeping your honest wages clean and clear of any of the perfidious profits?

A. I know I attempted to have them different, listed different ways.

The Court: Very well. We will have a recess for 20 minutes.

(Short recess.)

The Court: Be seated please.

Q. (By Mr. Foreman) And then, Mr. Heras, on May 17, 1950, a deposit of currency for $200. Can you give us an explanation as to the source of that currency?

A. It was either a part of proceeds of a note or money that I just had, my savings or what have you. I am more inclined to believe it was either an advance or loan of money.

Q. Let me see if I follow you. Either the proceeds of a note?

A. Yes, sir.

Q. Or money that I had in my pocket, savings or what have you, or an advance or loan of money?

A. Yes, sir.

Q. Any one of those three. An advance and loan of money is a different item. That would have been from the BISD?

A. Yes, sir.

Q. And it would have been money that you advanced or loaned yourself?

A. It could have been part of the advance of money that I would draw from the School District upon permission.

Q. Upon commission?

A. Permission.

Q. It could have been "per" also?

A. More likely it was.

Q. If that had been an advance, it would have been shown as an advance and charged to the advance account?

A. Yes, sir.

Q. Then it would normally show on the check and on the deposit slip as those other advance checks have done?

A. Not necessarily. Some of these advance checks were given to me and I would cash the check at one bank and put part of the proceeds in the San Diego State Bank. This could have been a 250 or a 210.

Q. Was there any pre-planned or concerted design to make you think that appeared the practical, probable best thing to do?

A. No. It is just—it was a practice of either cashing the check at one place, either at the bank or some other place, and bring part of the proceeds back and put it in the San Diego bank in cash.

Q. Well, were all of the advance checks that you considered advances made payable to you, or were sometimes they made payable to some other Latin-American name

and endorsed with that name and cashed somewhere else, and then the proceeds turned over to you just perhaps as an advance?

A. No, sir.

Q. By no, sir, you mean they were not always made payable to you, or they were not made otherwise to different people?

A. Those checks were always made out payable to me, advance checks.

Q. Any proceeds—

A. I don't recall of an advance check being made to any other individual or in somebody else's name.

Q. But that might have happened, might it not, sir?

A. No, I don't believe so. I believe if the check was issued to me, it was issued in my name.

Q. Then you said, "Savings I had or what have you." I know what savings are, but when you use the expression "what have you," is that a figure of operation, or does it connote some particular place or deposit or safekeeping, or a fund for you? What do you mean by the expression "what have you"?

A. A sort of et cetera. We would keep a little cash box in our office, a revolving fund account. Where we kept over a hundred or 200 or 300 dollars for different instances.

Q. This is as good a time as any to explain that. That was a practice that prevailed back to how long?

A. I don't remember.

Q. Was it going on when you took over from Ed Vaello Puig back in '30?

A. I don't recall. We had the revolving fund for many years, but how long I don't know.

Q. Was it started during your tenure or before you

came into the Benavides office? Was it a policy to keep petty cash, several hundred dollars, prevailing there, before you went to work?

A. I believe the School District always maintained a little revolving fund for bills to be paid.

Q. My question is, was it something you found as an office practice when you went to work, Mr. Heras?

A. Yes, sir.

Q. And you did come in there when F. Vaello Puig, Joe Vaello's father went out of office, did you not?

A. Yes. I continued with the School District.

Q. Did you work for him? Was he the tax collector and assessor when you went to work for the BISD?

A. No, he was not tax collector.

Q. Who was the nominal tax collector at the time when you went to work?

A. The tax collector was J. A. Heras.

Q. What relation is J. A. Heras to you?

A. My uncle.

Q. Did he or not have a contract for three per cent of the total tax rolls for his compensation, or do you know?

A. I do not know.

Q. Do you know whether F. Vaello Puig had such a contract?

A. No, I do not.

Q. As a matter of fact, you have seen it in the old minutes?

A. I don't know. I don't recall.

Q. Tell the jury how the office business was conducted so as to explain to them what this petty cash fund was used for and why it was necessary to have it?

A. It was necessary to have a petty cash fund in the office to pay bills like telegrams or merchandise that was delivered to the School District collect, where you have to pay the delivery truck or salesman at the time of delivery, and it was meant for definite purposes, to pay for the delivery of books and for telegrams and many other things that you have to pay cash for. Many a time, a delivery of school books would come in and the freight bill would be $30 or $40, and you would pay the delivery bill right there with the revolving fund, and then get the money reimbursed by the School District.

Q. A lot of your supplies printed and things like that from Galveston, a lot of times, would come in shipped collect?

A. Sometimes, yes.

Q. And sometimes those bills might run as high as several hundred dollars?

A. I don't know that it amounted to several hundred dollars.

Q. What is the most amount you remember carrying in the petty cash while you were handling it, you and Mr. Benson?

A. I don't recall, Mr. Foreman, how much it was but it wasn't over $300.

Q. And that would be paid out in cash?

A. Yes, sir.

Q. Then when the money was gone and of course receipts there for it, it would be replenished? How did you reestablish the $300 in the petty cash fund?

A. I would write out the check payable to the petty cash fund or office revolving fund for the amount of the bills to replenish that amount of money to the fund.

Q. Did you ever cash any BISD checks for that purpose?

A. I believe I did, yes.

Q. Now, you know you did and you know that was the custom and practice when Mr. Heras, your uncle, was there, when you first went to work, don't you?

A. Yes, sir. I don't recall whether he had a revolving fund actually then or not. I don't recall.

Q. Well, at any rate, you do know such petty cash was available when J. A. Heras was tax assessor-collector and all the way down through the years and up until you left the office?

A. As far as I know, we had a little revolving fund in those days, in those years, but I think the school superintendent had the revolving fund then.

Q. At any rate, when was the first one of the one being kept in the Benavides Independent School District tax office?

A. I think it started in '38 when we had—when we opened our petty cash or revolving fund account in the office.

Q. And you state that you have on many occasions cashed checks that were sent in in payment of taxes for the purpose of replenishing that petty cash?

Mr. Wilkey: He is misstating the record. He said, used the phrase, BISD checks, which I understood him to explain previously were checks drawn on the BISD.

Mr. Foreman: I used BISD for that and I said checks in payment of taxes.

The Court: You many continue. If the question is clear to the witness, the witness may answer.

Q. (By Mr. Foreman) Do you understand my question, Mr. Heras?

A. Yes. I want to explain just what I think you mean.

Q. No, you just tell me—if I don't make myself clear, that is my fault. I will ask the question again.

Mr. Wilkey: I submit, the witness ought to understand the question before he attempts to answer it.

The Court: Yes, the witness should. If the question is clear to the witness, he will answer it.

Q. (By Mr. Foreman) I should make myself clear enough that you don't have to guess. My question is checks coming in in payment of taxes?

A. No, sir.

Q. You have never cashed such checks to replenish the revolving fund of the BISD?

A. No, sir.

Q. What checks have you cashed to replenish the petty cash fund?

A. The only checks I have cashed are those BISD checks drawn on the local maintenance fund, which is the operating fund of the School District.

Q. You have never taken incoming checks in small amounts or large to the San Diego State Bank and cashed them to use for petty cash?

A. No.

Q. Have you ever sworn that you did?

A. I don't know whether I have sworn or not.

Q. But if you ever did so swear, you were swearing a falsehood, is that correct?

A. No, I don't believe I have testified that I cashed tax collector's checks.

Q. Well, I am asking, are you telling this jury now, today, you have never gone to the San Diego State Bank and cashed tax payers' checks, that is checks in payment of taxes—we will leave out the petty cash fund—I assume that is what you said before, maybe you didn't swear that, but I will say without saying you did it before, had you ever done it through an individual, gone to the San Diego State Bank and cashed checks that would come in to the BISD in payment of taxes? Tell us yes or no.

A. No, sir.

Q. Did you or not swear before the Duval County grand jury, that returned the first of these several hundred indictments against these men, that you did do so?

A. I don't recall.

Q. But if you did swear before the Duval County grand jury, you were sworn to tell the truth at that time, the same oath you took here?

A. Yes, sir.

Q. And if you did so testify under oath there, it was false, is that correct, sir?

A. If I did, I didn't understand the question.

Q. Well, as a matter of fact, at that time you hadn't been as thoroughly schooled in how to testify, had you?

A. No, sir.

Q. And at that time, you hadn't read that that practice carried on at the BISD was a part of the scheme to defraud the District in this indictment, that is, of cashing taxpayers' checks at banks other than the depository. You hadn't read the indictment then, had you, when you testified before the Duval County grand jury?

A. No, sir.

Q. But you do now know, don't you, Mr. Heras, that the practice of cashing checks at banks other than the

school depository is one of the alleged acts in this—of which these men are accused of doing and part of the futherance of the scheme to defraud the BISD? You know that is part of the accusation in this indictment?

A. I don't think I have read the indictment. I don't know what it covers, whether it covers anything like that or not.

Q. You say you don't think you have. Have you or not read the indictment?

A. I haven't read the indictment.

Q. Whether you have read the indictment or not, do you know that that is one of the Government's theories in this case?

A. I haven't read it.

Q. I see. Well, did anybody, while you were managing the office, or you and Mr. Benson together were administering the office, we will say, we won't dignify it by managing, did you or not at any time see such checks cashed to replenish the petty cash fund?

A. No, sir.

Q. And the only checks that you have ever cashed at the San Diego State Bank have been checks subject to being cashed at any bank of the BISD?

A. Yes, sir.

Q. We will get back to that whenever we find that. We will get on with this. Mr. Heras, I was attempting to find, just before we were called back to order in court the next check, which is for $300, and is shown here as check No. 27534, dated, or deposited I should say, the deposit slip showing that check, May 17, 1950. Those are the series of—of course it may have been on some other account, but it is the next deposit slip here and will you please, sir, being more familiar with that than I am, help

me find that check so we can see who it was payable to and, if we can, what it was for. It was deposited to your credit May 17, 1950, check No. 27534, for $300.

A. (Indicating.) Here it is right here.

Q. That is even to you, isn't it?

A. Yes.

Q. Even to Diego Heras. Now, let's see what that was for. It shows to have been dated, the date of the voucher, the same day, 5-17-50. The number of the voucher is 27534, to whom paid, Diego Heras, and it is for what paid? Tax work? 5-22-50, $300? Now, then, that would be interesting to know. What did this salary check for $250 just a couple of—15 days before—that was your month's wages, wasn't it?

A. Yes, sir.

Q. And that was supposed to include all of your time and what that was for was for tax work, wasn't it?

A. Yes, sir.

Q. Then this tax work here was just for overtime?

A. No, some of that money was in the nature of tax work, service for the office in Benavides, Texas.

Q. Come again? Give me a return on that?

A. Some of that tax work were checks I got for paying tax work in Benavides, Texas.

Q. Some of that tax work check I got was for tax work in Benavides, Texas?

A. Yes.

Q. That is as plain as can be.

Mr. Wilkey: Let the witness give his answer, Mr. Foreman.

Mr. Foreman: I got it. Do you want to explain it any further?

A. Yes. I don't know offhand what that $300 was exactly for. It is tax work all right, but some of that money was given to me for either going to Austin or Corpus, you know, to do the tax work.

Q. I missed the last word. Corpus or Austin for what?

A. For tax work and other business of the School District. Occasionally I would be called to Corpus Christi to process the renditions and division orders of the renditions.

Q. Process the renditions and mineral orders of the —process the renditions and what?

A. Division orders. A division order book is an ownership list of all the minerals, and I would go to Corpus Christi to do that work.

Q. Yes, Corpus Christi. Is Corpus Christi the county seat of Duval County?

A. No, sir, but our engineers had their headquarters at Corpus Christi. Their main office was in Dallas, but they had a branch office in Corpus.

Q. You mean Thomas Y. Pickett?

A. Yes, sir, and I had gone to Corpus Christi and looked those renditions over and got the books ready. Since it was this payment here in May, it is about the time I get the renditions ready for the tax roll.

Q. Well, now, it says for tax work. Were you supposed to do that in connection with your $250 salary you deposited on May 2, this being deposited on May 17?

A. Ordinarily under the terms of the contract, the engineer is supposed to work those figures up, the books, but in cooperation with the engineers I would go to Corpus Christi and work the School District books up for us and

I would be either given a travel expense check or an allowance for two or three weeks, as long as I stayed in Corpus.

Q. I get it now. You drew—I think I see. You drew your regular salary for such time as you spent in Duval County or Benavides or San Diego or Alice, but if you went to Corpus Christi, you got paid extra by the day for the time you spent over there. Is that what you mean?

A. Yes, sir.

Q. A per diem, I believe the Government employees call it, is that right?

A. Well,—I wouldn't say per diem, daily. It was just an amount given for tax work. I just put it that way, and to be used in paying either the room and hotel bill and my different expenses I had.

Q. Mr. Heras, we are fixing to hit a lulu on expenses in a minute, but you mean this thing for tax work should have shown expenses?

A. It is more in connection with expenses than anything else, Mr. Foreman.

Q. Because it wouldn't have been honest to have charged for your time since they were paying you by the year and month, would it? That is why it is more expenses than anything else?

A. That is my best guess, Mr. Foreman.

Q. As a matter of fact, it is just a check for tax work and you don't know what it is for except it is for you?

A. No, it has a notation there "tax work."

Q. I know it.

A. Which is in connection with the assessment of taxes. It was either used in travel outside the county or used in connection with the processing of the tax data.

Q. Then it is your understanding that you were out

of the county for how long a period of time just before that was paid?

A. I don't know. Sometimes I would take off the following day and sometimes I would wait until I got time to do so.

Q. How long did you stay when you went on such trips you claim entitle you to $300 for tax work?

A. Sometimes three or four days, and sometimes I stayed over there two weeks.

Q. Sometimes you would stay over two weeks? Did you any time in April or May of 1950 stay over there in Corpus two weeks?

A. I don't know. I never stayed there two weeks.

Q. Well—

A. I was there five or six days and would come back in on week ends, and probably the second day, if I needed anything, I would rush to San Diego and get it.

Q. Just rush over and rush back. At any rate, you weren't gone very long because you were there on the 2nd of April, the 19th, the 26th, the 29th, May 2nd, the 17th, the 23rd and the 24th. Is this when you were gone, the 2nd and the 17th, when you weren't making any deposits?

A. It could have possibly been.

Q. "Could have possibly," isn't very definite. If you can be any more definite, will you tell this jury you were even a single day between the 7th of May or the 17th of May in Corpus Christi? Will you tell us, if you know?

A. No, I don't know.

Q. And your best judgment is that you weren't, isn't it? Isn't that true?

A. I could have been away 10 or 15 days between those dates.

Q. You could have been, but were you?

A. I could have been away. I'm not positive whether I was away or not, but during the month, the early part of May of this year, we started the rush period in the office.

Q. You started what, "studied the rice period?"

A. No, started the rush period in May, about the early part of May, and it was the first two or three weeks of the month I would spend either in Corpus, either coming back every other day, or staying there two or three days in a row.

Q. Isn't it true, Mr. Heras, that you just decided you were working too hard for the kind of wages you were getting, and you were going to write you an extra check for $300 because you knew you could get away with it? Isn't that the rationalization for that check 27534?

A. No, sir.

Q. Do you know what Benavides check for $150 was deposited on May 23, 1950, sir? It is the next deposit.

A. No, I don't.

Q. At any rate, it was a BISD check and it was deposited to your credit, wasn't it?

A. Yes.

Q. It could have been for tax work too, as far as you know?

A. It doesn't say anything else but Benavides. It could have been a check on the Benavides bank.

Q. It could have been a check on the Benavides bank?

A. Yes.

Q. By the way, did you get any kick-backs on checks cashed of the BISD from Jose Cadena?

A. No, sir.

Q. Are you a good friend of Jose Cadena?

A. I have known him all my life.

Q. Tell the jury how good a friend of Jose Cadena's you are.

A. He is a nice friend of mine. We don't see too much of each other, but he has a friendship to me on the level, the category, of most of the townspeople there I have known for years. I never made any deals with him or sold him anything.

Q. You mean you are on good terms with all of the townspeople of Benavides?

A. I don't know now.

Q. Sir?

A. I don't know.

Q. Do you know any you are on good terms with?

A. I couldn't say.

Q. Except Jose Cadena, of course, and Joe Vaello?

A. I have a lot of good friends over there, many of them, but you asked about Jose Cadena. I know him and he is a friend of mine.

Q. You can cash any kind of check you wanted to there, couldn't you?

A. I don't think so.

Q. You mean he didn't cash your checks?

A. I think some checks, even though they were bona fide checks, I would have to get the okay from the cashier to cash them, I mean big checks.

Q. Well, such checks as he would offer to cash for you, he would cash, wouldn't he, any that you presented him?

A. Well, most of the checks I presented to Jose Cadena at the bank were either School District checks payable to me, or checks on my personal account.

Q. You say at the bank. Did you ever present Jose Cadena any checks to be cashed in his kitchen there in Benavides?

A. No, sir.

Q. Do you know whether any of the other employees of the BISD did?

A. No, sir, I don't know.

Q. Did you state you knew one Homero Gutierrez?

A. Yes, I know him.

Q. A good friend of his?

A. Well, I know him, but I don't see very much of him.

Q. Before you took leave of Benavides, did you see him often when he was there?

A. No.

Q. You used to work with him?

A. No, Homero Gutierrez was not connected with the School District when I was working with the school.

Q. Wasn't Homero Gutierrez your connection with the School District in the year 1953 after you left them on December 31 and quit drawing your pay check March 31, 1953, wasn't Homero Gutierrez your connection with, your alter ego, your amanuensis, your representative in doing the same thing for you you had done for yourself from 1948, 1949, 1950, 1951 and 1952?

A. No, sir.

Q. Didn't Homero Gutierrez do that for you in the year, to-wit: October 5th and 14th, 1953?

A. No, sir.

Q. Well, what was your connection? How often did you see Homero in the fall of 1953?

A. I don't remember. I saw very seldom of him.

Q. Well, now, where did Homero Gutierrez live with reference to this banking cashier or teller Jose Cadena? Were there houses back to back? Were they in each other's yards?

A. I don't know the direction. I know they lived in the same block, but I don't know how far apart.

A. It is possible.

Q. Did you have anything to do with financing the various business ventures of Homero Gutierrez in November and December and January of 1952—November and December of 1953 and January of 1954?

A. No, sir.

Q. Mr. Heras, you have already established at the beginning now that the total for May was $1,012.81 in this one bank, isn't that true?

A. I haven't seen the figures, Mr. Foreman.

Q. $1,012.81?

A. Yes, sir.

Q. By the way, my co-counsel failed to get your answer to my question a while ago if you advanced yourself as much as $64,000 during the years 1949, 1950 and 1951. I thought you said you didn't know, but he said you didn't answer the question. Will you answer the question?

A. What was the question again?

Q. The question I asked you while ago as to the total amount of the funds or sums you advanced yourself, you and Willie Benson, for 1948, 1949, 1950 and the first half of 1951. Could and did it aggregate $64,000?

A. I don't know.

Q. That is what I thought you said. Now, Mr. Heras, I started to say hold onto your hat, but that wouldn't be proper in court, but these travel expenses, this was really one month, wasn't it, the month of June, 1950? Boy, we went round and round. Travel expense on June 2, 1950, $125; salary check, June 3, 1950, $250; travel expense, $75; June 10, 1950, travel expense $250; check, just a blank check, for $110? June 15, 1950, currency $100;

currency another $100. One deposit and two sets of currency on two deposit slips, and then on 6-26-50, travel expense $300. You chartered a plane and went around the world, didn't you, Diego?

A. That is the month of June and I have to do a lot of traveling.

Q. You sure did, didn't you?

A. During the month of June, I made several trips to Corpus and—

Q. Alice?

A. I go through Alice, but I did a lot of traveling in June.

Q. You went over to Laredo once?

A. I don't think I did. I don't think I had time to go to Laredo.

Q. Just Alice, Benavides and Corpus, 70 miles to Corpus, 10 miles to Alice, and Benavides 10 miles from San Diego?

A. Yes.

Q. Did you have a guide on those trips?

A. No, sir.

Q. This was all for transportation.

Mr. Wilkey: Your Honor, may he answer the question Mr. Foreman has repeatedly interrupted.

The Court: Let the witness complete his answer.

Mr. Foreman: I am sorry.

Mr. Wilkey: Just let him answer instead of your speaking, Mr. Foreman.

Q. (By Mr. Foreman) Go ahead and answer. Have you got something to answer me?

Mr. Wilkey: I ask that the question be read back. I think it is very unfair to the witness.

The Court: I suggest the question be rephrased.

Mr. Wilkey: He asked a question and added something else.

The Court: It has been interrupted, and I suggest it be rephrased.

Q. (By Mr. Foreman) Will you tell us where you went besides the 80 mile journey to Corpus, and of course the return trip, and the trips to Alice and back, and from Benavides, 15 miles, to San Diego in the forenoon and returning in, presumably, the afternoon? What other journeys did you make in June that called for $1,310 worth of expenses?

A. Not all $1,300 were expenses.

Q. No? Well, let's break them down. $1,310 was the total deposit for June. $300 travel expense and $250 and that makes $750.

The Court: That would be $550, Mr. Foreman.

Mr. Foreman: Thank you, Judge. That is correct, and I am wrong.

Three hundred and 250 is 550, and 75 is 625, and another 100 makes $725 for travel expenses for the month of June, 1950, which is a little over half of the $1,310?

A. My traveling during some of those months was as far as Austin, Texas.

Q. Oh?

A. Yes, sir.

Q. Of course you bought your gas in Benavides or San Diego?

A. Yes, sir, and repair bills too.

Q. Oh, I see. Did you have any repair bills in the month of June, 1950?

A. I believe so.

Q. Tell us where and when and what.

A. Repairs were either done in Alice or some other place, San Antone or Corpus Christi, but—does that answer your question?

Q. If that is your answer, all right. Whatever is the truth is all we expect from you. How did you have a repair bill in San Antonio if you only went to Austin, Corpus Christi, Alice and San Diego? You didn't have any work done on that jeep, did you?

A. No.

Q. Then what repair bill, if you recall, did you have?

A. It was on my car traveling for the school, but those big items, I think, was money reimbursed for the expenses, either tires or repairs, but I did a lot of traveling during the month of June.

Q. Did you buy any tires, if so where, and what check paid for them?

A. I don't recall, but when I was sent out to either Corpus, Austin or San Antone, I pay my expenses and get reimbursed for them, and sometimes motor trouble and hotel bills and all of that, and that is what I got that travel expense for.

Q. But you don't recall any expenses you had except gas and oil for which you paid by check of the BISD separate from any of your personal checks, is that true or not?

A. I didn't get the question.

Q. You don't recall any expenses except gas and oil, and you only recall that because it would be incident to the operation of your automobile, isn't that true?

A. Yes.

Q. And actually your gas and oil was paid for by a separate check other than your $75 check?

A. Some of the gas I use out of town I pay out of my petty cash, out of my travel expense, and, in fact, everything incurred, all expenses that arose from my journey, hotel and what have you, all those miscellaneous I paid out of my expense checks.

Q. Did you include Nina Palacios in "what have you"?

A. No, sir.

Q. Then your testimony is that you had $700 worth of hotel bills, plus gas and oil you might have bought out of town?

A. Yes.

Q. Where did you spend one dime on a hotel bill in 1950?

A. I don't recall. It could have been Corpus, San Antone, or Austin.

Q. There wasn't over a week's difference between any of those except 6-15 to 6-26, was there?

A. Eleven days' difference there.

Q. I said except 6-15 to 6-26. That is the only time there is more than a week's difference, isn't that true?

A. Yes, sir.

Q. And that is eleven days. And you telling us you spent eleven days in Corpus in June?

A. Not eleven days in a row. I was on the road during that month.

Q. How far is Austin, Texas in miles from San Diego and Duval County?

A. I think it is about 230 or 240 miles.

Q. What was or would have been the occasion of your going to Austin in June of 1950, if you went?

A. I went to Austin on several errands. About the middle of 1950, I think, we voted a bond issue and I was to go to Austin to deliver the bonds for registration and approval.

Q. By the way, here is something that suggests itself. Perhaps you could give us an explanation. Isn't that $1,310 item for June of 1950, isn't that the last month your compadre, or Mr. William Marvin Benson, countersigned checks? Didn't he stop countersigning them in June, the end of June, 1950?

A. It was during the month of June, 1950.

Q. Then up until then, the last two months had been over a thousand average, more than a thousand dollars a month, hadn't they?

A. Yes, sir.

Q. And when George Parr started countersigning them in June of 1950, you dropped to $530 for July and to $268 for August and to $290 for September, and $310 for October, didn't you?

A. That is the way it is listed there. I don't have any way of checking those figures.

Q. Yes, you do.

A. I can see that they went down.

Q. Check them. Let's see if you don't have some way of checking them. First turn to July 7-6-50. It should be there. You had two deposits, one on 6 July and one on the 13th of July?

A. Yes.

Q. Now, the one on the 6th of July just says check $100 and travel expense $100. That was the deposit for July 6, 1950. By the way, did you represent to Mr. Parr you were—had been drawing from Mr. Benson travel expense of $100, that that was your allowance?

A. I don't know whether I did or not.

Q. If you did it would have been false and untrue because it was merely $75. That is all you were actually supposed to get, $75?

A. It was set at $75, but not necessarily $75 every month. I had made an agreement with the board, the school, that I would put in more than $75 on my car, I would get reimbursed.

Q. My only question is, how did, the first month Mr. Parr signed your check, it go up to $100 where it has always been $75 for the year and six months preceding? Did you have anything to do with representing that was your allowance when Mr. Parr started signing checks?

A. No.

Q. You don't recall?

A. No.

Q. And you don't know what that B-e-n check is, for $100?

A. I don't recall what it is.

Q. And your total deposit on the 13th was your salary check and currency. Salary check for $250 and currency of $80, is that correct?

A. There is one here for $80 and the other one is $200.

Q. Then if that is a legitimate traveling check, all that was stolen that month was the $180 for the month of July. That is all you got away with that you couldn't explain?

A. The money I was given by the School District for

travel expense and for salary, and I don't know what the advance check is, but not stolen.

Q. I see. Now, the next—you even quit depositing. It wasn't worth going to the bank for that little amount so you quit depositing your salary check and expense check with the July deposits and in August, September and October you didn't deposit your salary check or expense check, did you, Mr. Heras? Look and see if you did.

A. There is August 29.

Q. Do you have a deposit for August 29 there? I have only 8-10 and 8-17.

A. Here is 8-10.

Q. If you have August 29, I would like to have it because I don't have it. I only have August 10 and August 17.

A. Yes, here is one August 29.

Q. Yes, it is. What kind of check is that August 29th, which I don't have, 88-21-34. Would that be—can you, from that number, identify that check as to what it is for?

A. It is an advance. It so reads, a-d-v, right there.

Q. That would be a BISD check, wouldn't it?

A. Yes.

Q. 88-21-34?

A. That must be the number.

Q. Of the bank, the Texas State Bank, which had a Federal Reserve number at Alice?

A. I think so.

Q. I'd better put that here because the stenographer left it off. Let me have that.

Then you really in August deposited $268 plus the $330, is that correct, or $596?

A. Yes, sir.

Q. Now, then, give us your—it says this is a San Diego grocery check, $29. Could you tell us what that is?

A. No, I don't recall what that money is.

Q. That wouldn't have been—would that check have been payable to you?

A. No, I don't—I don't—I don't know.

Q. Who operates the San Diego Grocery?

A. I don't know.

Q. Is there one?

A. Yes, there was one many years ago.

Q. Was there one in 1950?

A. I think so.

Q. But you do not know who ran it?

A. No.

Q. Did you ever give them a check there and they ever give you one?

A. I don't recall. It could have been a check made out payable to me for something or I could have cashed a check.

Q. Could it have been—cashed a check out of the petty cash?

A. No, I don't think so. I don't know what that $29 is offhand.

Q. You might have cashed that check to reimburse their cash supplies as a favor to them?

A. That could have been.

Q. Did you trade with them?

A. Yes.

Q. As a matter of fact, you had a great many people that whenever you called upon them they cashed checks for you, didn't they?

A. Not too many people. This grocery store was the one I dealt with in San Diego, and I don't know whether

they paid me for services or I cashed a check for them. I don't know.

Q. You mean you might have done some work for them, stenographic work, or something?

A. I did some sign painting one time for a grocery store, but I don't know whether it is the San Diego Grocery Store or not.

Q. Thomas Pelance. Does that ring a bell?

A. That is another man I dealt with, but I don't know what that $39 is.

Q. That is the 8-10 deposit, and 8-17-50, currency for $200?

A. Yes, sir.

Q. You didn't make a deposit, and then your check—I didn't have 8-29 where you deposited your salary check of $250 and an advance check for the difference, correct?

A. Yes, sir.

Q. Now, in September, you didn't deposit your salary check, or look and see if you did. Maybe I don't have it complete. I have two deposits for September, 9-9-50 and 9-23-50. Do you have any more?

A. No, I don't see any September deposit slips.

Q. Maybe—that was August 31. Maybe the fiscal year finished there.

A. Here is September here.

Q. Here is August 17. There ought to be another one somewhere. Have you got another September?

A. No, I haven't.

Q. We have gone through those before, haven't we? Let's see if we have got one over there. Well, we will take the one September we do have, 9-9. That is J. C. King for 150. Have I gone through all of my photostats? Digressing a moment here, Mr. Heras, getting to Govern-

ment's Tender No. 9, which is the question and answer testimony of yourself before the Duval grand jury when you were being questioned by Mr. Gresham, tendered me at the direction of the Court by the prosecuting attorney, and I have your testimony before the Duval County grand jury, and directing your attention back to the question and answer you made a while ago that you never did cash taxpayers' checks at the San Diego State Bank, I want to ask you if these questions were asked you while you were under oath in the grand jury in Duval County, and if you made these answers to questions by Mr. Gresham:

"Question: Did you have any authority to draw checks—"

Wait a minute. We will open up a little further by way of introduction.

"Question: I am going to show you a check here issued by Goldman Drilling Company on December 10, 1951, for $475.80, payable to the BISD. That check is endorsed in typewriter BISD Taxation Department with the initials D. H. written underneath that in handwriting. Is that your initials?"

Was that question asked and you make this answer:

"It looks like it, but still I doubt it. I always use a loop on this H here."

Did you make that answer to Mr. Gresham when he asked you that question?

A. Yes, sir.

Q. Then did he ask this question:

"Question: Do you have any recollection to that fact," and did you make the answer:

"Not right now, Mr. Gresham. I mean this as a receipt. I made the receipt on that, but as far as this check, it has my signature but I don't recall it."

Was that question asked and that answer made?

A. Yes, sir.

Q. And this question, "Did the School District keep an account in the San Diego State Bank," and did you make the answer, "Yes"?

A. Yes.

Q. Speak out so they can all hear you.

A. Yes.

Q. "Question: What was the purpose for that account," and answer: "Mr. Chapa opened that account. It is entitled D. C. Chapa, Tax Collector and Assessor." Was that question asked and that answer made?

A. Yes, sir.

Q. "Question: Did you have any authority to draw checks against that account?"

Did you make the answer: "Yes, sir"?

A. Yes.

Q. This question: "Did you make deposits to that account from time to time?"

"Answer: No. He made deposits himself."

Was that question and answer made?

A. Yes, sir.

Q. "Did you ever cash any School District checks at the San Diego State Bank and get the cash money on them?"

And did you answer: "Operating fund checks"?

A. Yes, sir.

Q. And then this question: "Checks of taxpayers payable to the School District," and did you answer: "Yes, I believe that I did"?

A. I believed then but I still have in mind I meant the operation fund check, which I have.

Q. My question—go ahead, sir. I am sorry. You be-

lieved what, and you still had in mind, and you now believe what?

A. That refers to operating fund, sir, not to District taxpayers' checks.

Q. Whose words are "Operating fund checks"? Are those yours or Mr. Gresham's?

A. They are mine.

Q. And you say you believe that referred to operating fund checks?

A. Yes, that is what I said, "Operating fund." My answer to that question is "Operating fund checks."

Q. I heard you. I mean, I read you and I know that is what you said but by operating fund checks, do you mean funds to keep the School District operating? By petty cash, is that what you call operating fund checks?

A. Operating fund checks covers many different types of work and services. We pay them out of the operating fund, sir.

Q. This is the one you said, "Yes, I believe I did."

"Question: Checks of taxpayers payable to the School District," and that was the question. "Checks of taxpayers payable to the School District," and you answered, "Yeah, I believe that I did." You said you cashed checks of taxpayble to the School District, didn't you?

A. I was just guessing there. I still had the operating fund checks in my mind.

Q. Well, let's see if you did, "Question: And what did you do with the proceeds of those checks?"

"Answer: Mr. Chapa would get the checks."

You say you were just guessing when you were testifying under oath before the grand jury?

A. I was testifying to the best of my knowledge.

Q. But you now say, although you were swearing to

the truth and swore to tell the truth, the whole truth and nothing but the truth, you were just guessing?

A. I think that I still meant the operating fund checks I cashed for Mr. Chapa.

Q. While we are here, and I intend to touch it again later, but it is a good time to give it a light touch, with reference to your testimony that you never got a dirty dime, in one place your sworn statement to Mr. W. D. Main that you never got one red cent of the proceeds of the checks you have cashed, what did you tell the grand jury in the next question about cashed checks? Did you tell them you got them or tell them you don't, or were you just guessing?

A. I don't remember what I answered that question.

Q. What is the truth? Did you or not get kick-backs?

A. No. I never got any kick-backs from cashing those checks. I don't know whether I should call it kick-backs, anything I was given when I asked for it. Ordinarily when I went to the bank to cash those checks, not every time, but I would ask for some money and I would either have Mr. Parr go on my note with me and I would get the money from the bank, or I would get an advance from the School District, but as far as opening an envelope and getting money from money out of the proceeds, that was not the case.

Q. Well, there was a kick-back injected in your grand jury testimony, either your testimony, or was it in the form of a question, the word "kick-back"? Who injected "kick-back," as far as your testimony is concerned? Who was the first person to use it? Was it Diego Heras?

A. I don't know. The first time this day or yesterday or week before last I have heard mentioned kick-back has been from you.

Q. I wasn't before the grand jury in Duval, was I? They didn't have me down there, did they?

A. No.

Q. Did you use the word "kick-back"? Were you asked the question "Did you get any part of it," and did you answer, "A kick-back, $25 or $10"?

A. I might have said it, you know, that way, but I will say kick-back is something you get right offhand. I don't know that I got any money right offhand. I would get some money from Mr. Parr through a note or advance check. I might have gotten one or two times money from him, you know, but not directly connected with the cashing of the checks.

Q. You didn't take any of this filthy lucre, the looted funds of the School District, because it was tainted stuff. You had to give yourself the legal way, the legitimate way, by signing a note, didn't you, Mr. Heras?

A. Mr. Foreman, every time I needed money, I consulted Mr. Parr or Mr. Benson and I would get the money.

Q. Or write a check?

A. I wrote a check on the initiative or Mr. Parr.

Q. On the intiative?

A. I would consult him. I would borrow $100 or $200, and he would give me an okay.

Q. And he was always right there, always stays in his office day and night, wasn't out around the oil fields, around his ranches, around his stables, around the other interests such as the Chevrolet and Ford agencies. He was right there "Johnny-on-the-spot," ready to consult you and say, "Lay on, Diego." Is that the way he was, always at your beck and call, or did you have to telephone him or blow a whistle?

A. Mr. Parr was in and out. He was all over the county, and he came in every day and I would see him.

Q. And he says, "Is there anything my boy wants today"?

A. No, he didn't say that. If he had something to say to me, he would say it, and if he wanted me to cash the checks, I would go ahead and do what he told me to do.

Q. Sure, and was this question asked you and did you make this answer:

"Did you ever get any part of that?"

And your answer, "A kick-back, say $5 or $10 of it. Ordinarily he would take the checks to the bank himself."

Now, what would you say is the meaning of the word "kick-back," in the vernacular of thieves of school funds?

A. I don't know, Mr. Foreman.

Q. Not being one?

A. I don't know. I still say there might have been times when he gave me five or ten bucks.

Q. Do you call that a "dirty dime" or a "red cent," or is it because you got more than a red cent or more than a dirty dime you were able to testify under oath on two or three occasions you never received either a dirty dime or a red cent? Did you mean you received several hundred, several thousand, and not dimes or red cents?

A. I mean that I wouldn't have received any so-called kick-backs at the time of delivery of the checks in that manner.

Q. Didn't you just tell Mr. Gresham here under oath, in this record, that you got what you called a kick-back?

A. I may have said it that way.

Q. You might have said it that way?

A. Yes. I want to explain a little bit, Mr. Foreman, on these deliveries I made. I never received $10 or $15

kick-backs immediately after I delivered the money. It is true I might have received from Mr. Parr $10 or $20 on different occasions, yes, but not immediately upon delivery of the cash.

Q. Well, now, what about—

A. What I mean is that he didn't open the envelopes of five or ten thousand dollars and give me a $50 bill. That is what I meant.

Q. Well, Mr. Heras, right now we are talking about Mr. D. C. Chapa. That is what the question is about and had to do with his opening this account, and my second question was the word "kick-back" and what it means, and if it was not your own words. Do you say with reference to the time you would go and cash taxpayers' checks at the San Diego bank that you didn't call what you got when you went back to the BISD a kick-back?

A. I don't recall having taken any tax collector's checks to the bank for Mr. Chapa. I did a lot of errands for him, going to the bank and cashing checks, either county or School District checks for him, but I didn't get a kick-back right there.

Q. You did not?

A. No. I did—Mr. Chapa helped, I would say, many times but it was not during my delivery of that money.

Q. Well, Mr. Heras, I am only trying to get an explanation as to what you said here. "Did you ever get any part of that," and your answer, "A kick-back of $25 or $10 of it." That is your word.

A. That is my words.

Q. Is that what you call a kick-back? Did you get that when you got back from the bank?

A. No, not when I come back from the bank, say $5

or $10, not that same day. I would get some from him. I know he helped me out, five or ten bucks every now and then when I needed it, but not necessarily in respect of that money.

Q. Was it kicked-back several days later, or kicked-back then?

A. I don't know if it is part of the money delivered to him or out of his pocket.

Q. But you called it a kick-back in the grand jury when asked about it?

A. I might have used the word "kick-back."

Q. Now, then, with reference to the checks you claim you turned the proceeds of over to Mr. Parr. You have heretofore sworn, last Friday morning, just before the noon adjournment of this case or the recess of this case, you told us flatly and without equivocation that you never got one red penny, one dime, or any money from any of those checks that you claim you cashed for Mr. Parr and the proceeds of which you claim you turned over to him. You now, as soon as I produced this grand jury testimony before the Duval County grand jury, say that you only got a few $20 bills.

A. I would get some money from him in the way of notes, and of course I might have borrowed $15 or $20 from Mr. Parr, but I don't believe it is part of the money I delivered to him.

Q. If you kept it and delivered it to him, of course it wasn't part of the money you delivered to him, but would it have been a part of the money you delivered him if you had delivered the money to him?

A. I believe I delivered all the money to him and the money was in a sealed envelope and I didn't open the envelope, and he didn't open the envelope in my presence.

Q. Mr. Heras, didn't one of your friends on the grand

jury chide you, reprimand you, for not stealing more of this money for yourself?

A. I don't recall anybody reprimanding me.

Q. You don't recall one of the jurors saying, "You didn't get enough, Diego. You didn't get enough when you got those $20 bills."

A. No, I don't recall.

Q. Could that have happened, Mr. Heras?

A. I don't think so. It seems to me that that would register in my mind about anybody making that remark there, but I don't recall.

Q. You say it may have happened, but you don't recall?

A. That is what I said.

Q. As a matter of fact, that grand jury, constituted as it was of Freedom Party members, would like for you to have stolen all that money and George not to have gotten a cent, wouldn't they?

A. I don't know.

Q. They were Freedom Party members?

A. I don't recall who was on the grand jury panel at that time.

Q. Well—

Mr. Wilkey: The record reflects the only one we have here is an Old Party member, Mr. Cuellar. That is the only one identified in the record.

Mr. Foreman: We had the Caballero son-in-law and uncle and he helped pick the grand jury, and he was a Freedom Party member.

Mr. Wilkey: But he wasn't on it.

Mr. Foreman: No, but he picked it. You can imagine what he picked.

Mr. Wilkey: We don't have to imagine. We know one, Mr. Cuellar, an Old Party man.

The Court: I have spoken to you before, you will not carry on conversations to each other, and you will not direct your remarks to each other. Any remarks to be made, when made, will be addressed to the Court and I think this will be a good time for us to sign off for today. It is five o'clock, and the jury is reminded of the instructions previously given, and Court is adjourned until 9:30 tomorrow morning.

11-2543 MORNING SESSION—JUNE 11, 1957

The Court: You may continue.

11-2543 DIEGO HERAS,

being the witness who was on the stand at the time court recessed on June 10, 1957, resumed the stand at this time and continued his testimony as follows:

11-2543 CROSS EXAMINATION (CONTINUED)

Q. (By Mr. Foreman) Mr. Heras, I have prepared an adding machine slip which purports to represent all currency deposits in the year 1949 about which you testified yesterday. We have authenticated this from your original deposit slips, Defendants' Exhibit 208. I wish you would

check and see if I have left off or added any. Of course, the star is the sub-total, and see if they are all there.

Mr. Wilkey: Your Honor, we would ask, if this is going to be put in evidence or even testified about, that the witness check the tape against the deposit slips, not against something else prepared by counsel. I am reasonably sure it is accurate, but human errors can happen and what he has asked is that the witness check something Mr. Foreman has prepared against something else.

Mr. Foreman: May it please the Court, the witness has already testified about each of these matters, comparing with these, however it would suit me as well to have it done the way the prosecution suggests.

The Court: Do you want to supply an adding machine in the courtroom or will the witness be asked to supply an adding machine?

Mr. Wilkey: I am satisfied to have him check the tape. It has already been added up, but I want him to check the tape against the deposit slips themselves, and if there is any item of currency on the deposit slips that is not on that tape, the witness should so indicate.

The Court: Very well. That will be done.

Mr. Wilkey: If I may suggest, Mr. Heras just have a seat and go over the tape insted of trying to stand up and do it.

(Witness complies with counsel's request.)

Q. (By Mr. Foreman) Is that correct?

A. Yes, sir.

Q. Will you write your name on that, please, sir?

(Witness complies with counsel's request.)

Have a seat please.

(Document tendered to the Clerk and marked Defendants' Exhibit No. 210.)

Q. (By Mr. Foreman) Now, the sum total of Defendants' Exhibit 210, which I now hand to you, is $2,340, isn't it?

A. Yes, sir.

Q. Is that the amount, Mr. Heras, you deposited in this one bank in currency during the year 1949, the San Diego State Bank at San Diego, Texas?

A. Yes, sir.

Mr. Foreman: We offer this in evidence.

Mr. Wilkey: No objection. That is $2,340?

Mr. Foreman: Yes.

Mr. Wilkey: That is not $8,000 in cash in 1949, is it?

Mr. Foreman: May it please the Court, we object and except to the comment of the prosecuting attorney as improper.

The Court: Objection sustained. The jury is instructed not to consider it.

Q. (By Mr. Foreman) Now, Mr. Heras, it is your explanation, as I understand it, that the bulk of that—these currency deposits represented by the exhibit now being passed to the jury, 210, is from loans made to you by the Texas State Bank at Alice?

A. Well, some of them are and some of them are not.

Q. Will you tell us approximately what percentage of them are loans made to you by the Texas State Bank at Alice?

A. I don't have any idea.

Q. Would you say 10 or 12 of them?

A. No, I don't know.

Q. Isn't it true, Mr. Heras, that not a single loan was made to you by the Texas State Bank of Alice during the entire year from January 1, 1949 to December 31, 1949? Isn't that true?

A. I don't know.

Q. Isn't it true that the only liability account you had with the Texas State Bank of Alice was a note made sometime prior to 1949 and brought forward as a liability, it being a $600 note, which note was first renewed in 1949 on March 31, and which note, with nothing paid on it whatever and no other notes executed, was renewed May 22, 1949 as Note No. 2219, and again renewed with no other notes made and no payments made on that note on June 22, 1949, as Note No. 2849, and again renewed on October 11, 1949, with no payments made on it and no other notes executed as Note No. 4090, and that not a single payment was made nor any new note executed until January 26, 1950 when you paid $300 on that old $600 note, is that true or false?

A. I don't recall, Mr. Foreman.

Q. And isn't it true that that note—the balance of

the $300, after the January 26 payment, was renewed as a $300 note, being Note 370, and was finally paid off on May 16, 1950; isn't that true?

A. I wouldn't know, Mr. Foreman.

Q. And isn't it further true that no more notes of any kind were executed by you, and no money loaned or advanced you by the Texas State Bank of Alice until June 26, 1950, when you borrowed $1,500, represented by their note No. 2223?

A. I don't recall.

Q. And isn't it true that that note was renewed December 26, 1950, as Note No. 112 with no payments made whatever and no other notes executed, and no other money loaned you, and finally renewed March 26, 1951 as Note No. 747, paid off April 14, 1951 in its entire amount? Isn't that the true history of all the transactions of any kind you have had?

A. I don't know. I don't have the records with me or bank notes ledger with me. I don't recall. I made some loans with the Texas State Bank, but I don't recall the dates.

Q. Then if that is the true representation of your liability ledger with the Texas State Bank of Alice for the year 1959, not a one of those items of currency on Defendants' Exhibit 210 would have come from any loan made by the Texas State Bank of Alice for— 1949. I should rephrase that. If I have correctly detailed every item and account and entry on your liability ledger for the Texas State Bank at Alice in that question, not one dollar of this—these currency deposits represented by Defendants' Exhibit 210 came from any loan at the Texas State Bank, did it?

A. No, it wouldn't have come from any loans. I did get some money from the Texas State Bank through advance checks, but—

Q. Let me see if this is a correct representation of your dealing on notes, your liability ledger with the San Diego State Bank of San Diego, Texas, for the year 1949, Mr. Heras. Isn't it true that on March 28, 1949, owing them nothing and having no outstanding notes, you borrowed $60, and on May 18, 1949, with your Note No. 4024, you borrowed $300, making your total debt to them $360, and on June 21, 1949, you made a payment reducing that note to $230, renewing—no, reducing that note to $130 and renewing that note, that on the 15th of September you borrowed an additional 30 with the 70, making your total indebtedness $200, and on November 13, 1949, you borrowed an additional $25, making your total indebtedness $225, and on November 24, 1949, you borrowed $125, making your total indebtedness $350, which you made a payment on and renewed on January 14, 1950, renewing the note, the balance of $225. Another payment was made on December 22, 1949 renewing the balance at $125, and you made a new note—that is 1950.

Mr. Wilkey: Excuse me. I lost track there. Was it December 22, 1949?

Mr. Foreman: I think that is the last one in 1949.

Mr. Wilkey: The balance of $125?

Mr. Foreman: Just a minute. Yes. Balance $350, December 22.

Mr. Wilkey: Is there any payment on December 22?

Mr. Foreman: $125 payment.

Mr. Wilkey: The balance on the 24th of November was given, the way you read it, as $350. If there was a payment in December, was the balance $350?

Mr. Foreman: Renewed at 225—evidently it is incorrect. I don't know why, but that is what they have got here. Do want to see it?

Mr. Wilkey: I am just trying to get my record straight what you have. It goes down and up, and then it should go up and down. You are reading it. I am trying to get it straight.

Mr. Foreman: Yes.

Of course, you couldn't remember all of that. Isn't that the first note, that $60 note you made? Hadn't you close out and paid everything off?

A. I don't have the notes with me, but it is listed there.

Q. As a matter of fact, you paid it off February 29, 1949. You paid $100 and closed out every indebtedness you had, didn't you?

A. Yes.

Q. In other words, I should have started up above that line shownig indebtedness, February 2, 1949, of the $100 paid off February 19, 1949, isn't that true?

A. Yes.

Q. And this note No. 3412 dated June 28, 1949 for $60 is that correct?

A. Yes, sir.

Q. Note 4024 dated June 18, 1949 is shown here as

subsequent to the one added on it for $300, making a total indebtedness of $360?

A. Yes.

Q. Note 4422 dated 7-18-49, reducing this $360 to $230 and renewing the note at $170; is that correct?

A. Yes.

Q. And 6-30-49, a $60 payment?

Mr. Wilkey: Right there, Mr. Foreman. I don't get how a $360 balance and a $230 payment was reducing it to $170.

Mr. Foreman: I don't know what he paid, but the note shows a renewal at $170.

Mr. Wilkey: I understood you to say 230 twice. Evidently he paid 230.

Q. (By Mr. Foreman) The balance was reduced to 230 on that date, and on June 30, 1949 a payment of $60 reducing the $230 balance to $170?

A. Yes.

Q. And renewed on 9-18-49, the $170 was?

A. Yes.

Q. And evidently the balance as of that date was $170, a new note executed September 15, 1949 for $30, making a balance owing the bank of $200?

A. Yes.

Q. On 11-13-49, a renewal increasing that balance to $225, a $25 loan, isn't that correct?

A. Yes.

Q. On November 24, 1949, note 5819, a new note for $125 increasing the $225 indebtedness to $350; is that correct?

A. Yes.

Q. Again on January 14, 1950, a renewal of that $350 note so that the balance remaining due as of that date was $350. That completes the period for 1949. We then get over into 1950. No, we have got one item. The top one says, due date, Note 6491—

A. 11-24.

Q. Date of the note 11-24-49 and due January 24, 1950.

Mr. Bottler: What was that amount?

Mr. Foreman: 11-24-49, number of note 6491, date due January 24, 1950, shows renewed for $125. It shows a December 22 payment of $125, and shows a balance here extended into the indebtedness, of $350, doesn't it? Aren't those the only notes that you made anywhere during the year 1949?

A. I don't know of any other place I borrowed money from.

Q. Getting back—I believe we had gotten through August in 1950 in the interrogation yesterday afternoon with reference to your deposits. You hold those things so you can follow me. Please find 9-9-50.

A. I don't see 9-9-50.

Q. That would be '49?

A. 9-9-50?

Q. September 9, 1950.

A. I was in '49.

Q. That was a J. C. King check for $150?

A. Yes, sir.

Q. And currency $140, making a total deposit for September 1950 of $290. No—that is just one account. J. C. King. 9-23-50?

A. Yes, sir.

Q. Currency $140. Those are the only two deposits in September of 1950, aren't they?

A. Yes, sir.

Q. And that totaled $290?

A. Yes, sir.

Q. Now, the October 11 and October 25, 1950 deposits, please sir?

A. October?

Q. 10-11-50. The one deposit on 10-11-50 was for currency, 250?

A. Yes.

Q. And on 10-25-50 currency?

A. $60.

Q. Then the last series, or the month of November—for the month of November for 11-3-50, 11-10-50, 11-15-50 and 11-22-50, all on one sheet?

A. Yes, sir.

Q. And isn't it true every and each one of the items there through 1122-50 was all currency, each item, 11-3-50 being currency $60?

A. Yes. This one here. $60. Then 11-10-50, $120.

Q. 11-15-50?

A. $135.

Q. All currency. 11-22-50, $200.

Mr. Wilkey: Excuse me, was there a November 3 there?

Mr. Foreman: Yes, sir.

Mr. Wilkey: How much was that?

Mr. Foreman: $60. By the way, there is an error there.

I have got currency there $60 twice. There really was only one $60 item.

A. Just one.

Q. That would reduce this thing $60, I would imagine.

Mr. Wilkey: I have got—we are dealing with the year 1950. I understood this was the year 1949.

Mr. Foreman: That is right. This wouldn't reduce that any.

Mr. Wilkey: In November 1950, to be sure I have the record right, there is $60, $120, $125.

Mr. Foreman: No, $135.

Mr. Wilkey: And what else?

Mr. Foreman: 11-22-50, how much is it?

A. $200.

Q. In currency?

A. Yes.

Q. And 11-29-50, how much in currency?

A. $200.

Q. You have one with no date on it?

A. No date.

Q. And it shows currency $160, doesn't it?

A. Yes, sir.

Q. Then the total deposits for the year 1950 here is $8,323.25, aren't they?

A. This figure of $8,323.25, that includes all deposits.

Q. All deposits?

Mr. Wilkey: May I ask if that figure is just currency or all deposits, checks, loans, advances?

Mr. Foreman: All deposits. $8,323.25, for 1950. I think it is probably $60 over. I think there is a typographical error on $60 there.

Mr. Wilkey: All right.

Q. (By Mr. Foreman) Now, isn't it true that the last half of 1950 the payments dropped approximately one-third each month to what they had been on all of 1949 and the first half of 1950 down into the month of November?

A. Yes.

Q. And in the month of December, 1950, you only made one deposit, a total of $30? Check that and see. That is the date, is it not?

A. Correct.

Mr. Wilkey: We are dealing here with the San Diego State Bank, so when you ask only one deposit, you mean the San Diego State Bank?

Mr. Foreman: All right.

A. What date is that?

Q. December 26, 1950.

A. $30, yes, sir.

Q. That is the only deposit. The last was November, up here, and the first is January here, so the only deposit for December was $30?

A. Yes, sir.

Q. Just by way of—I guess it would be better to make it complete. It is very short. Go through 1951. Have you

got January 13, 1951, January 23, 1951, and January 26, 1951?

A. Yes, sir.

Q. Is there a January 13, 1951 deposit simply to salary check of $250?

A. What date was that?

Q. January 13, 1951?

A. Yes, sir, $250.

Q. January 23, 1951 is simply a $5 currency deposit, isn't it?

A. Yes, sir.

Q. January 26, 1951, a currency of $300, isn't it?

A. Yes, sir.

Q. Making a total for January, 1951 of $555, isn't it?

A. Yes, sir.

Q. February, 1951. Do you have February 21, 1951?

A. Yes, sir.

Q. It was simply a $250 deposit for your salary check, and that is all you did deposit in February, 1951, wasn't it?

A. Yes, sir.

Q. And on March 3, 6, 9, 15, 19, and 22 you have March deposits there?

A. Yes, sir.

Q. And on the 3rd, you deposited Mrs. Diego Heras' check for $100?

A. Yes, sir.

Q. On the 6th a single entry, REFB check, $15.15. Was that a refund?

A. A refund, yes.

Q. Tax?

A. Yes, I believe so.

Q. Income tax?

A. Yes, I believe so.

Q. And on the 9th, you deposited currency of $50, didn't you?

A. Yes, sir.

Q. On the 15th of March, currency of $145?

A. Yes, sir.

Q. And on the 19th of March, currency of $40?

A. Yes, sir.

Q. Do you know any source of any of those three currency deposits in the middle of March?

A. No, I do not have any idea.

Q. Pardon me, sir. Are you through?

On March 22, 1951, a tax check of $250 less $50, a total of $200?

A. Yes, sir.

Q. Then the total for the month of March was $550.50, wasn't it?

A. I think so, Mr. Foreman.

Q. Mr. Heras, do you know what that—

Mr. Wilkey: Did you say 550?

Mr. Foreman: $550.50. The refund check was $15.50.

Mr. Wilkey: I have items of $250, $100—

Mr. Foreman: No, sir. The $250 was in February. That was a single item. March starts with Mrs. Diego Heras' check for $100.

Mr. Wilkey: $550?

Mr. Foreman: Correct, $550.50.

Mr. Wilkey: All right, sir.

Q. (By Mr. Foreman) Do you know what that last item, March 22, 1951, Texas check $250 less cash of $50 is?

A. No, sir, I don't.

Q. It could easily have been your pay check, couldn't it?

A. Yes, it could have been.

Q. Then April 2, 1951, Texas State Bank check $191 less cash of $50. Do you know what that was, less cash, making a deposit of $141?

A. I don't know what that check is.

Q. Travel expense $100?

A. Yes, sir.

Q. That was on 4-9-51?

A. Yes, sir.

Q. You saw that there?

A. Yes, sir.

Q. On April 14, 1951, currency of $140?

A. Yes, sir.

Q. On April 23, 1951, your salary check was deposited of $250, was it not?

A. Yes, sir.

Q. And the total for April was $631, wasn't it?

A. I don't know, Mr. Foreman. I didn't add this, but if you have it there—

Q. I should like to add this. I am sorry. I will give you those totals while I am here. The totals for May, $510—the totals—

Mr. Wilkey: Just a minute. I don't know whether those will come out right or not. I assume they will, but he is

asking him something he has prepared and saying the total is such-and-such.

The Court: He is entitled to ask leading questions.

Mr. Wilkey: But the witness can't answer and say "That is right."

The Court: If he can't, he should say he can't.

Q. (By Mr. Foreman) Mr. Heras, I was trying to keep from working back and forth for each month.

On May 4, 1951, you have a currency deposit of $60, don't you?

A. What date was that?

Q. May 4, 1951, currency of $60.

A. I don't see any deposit on May 4. There is one here on May 2.

Q. Was it $60?

A. No, it is more than that. It is my pay check.

Q. I don't even have it. Let's start with the 1st of May and see what you do have. You have May 2, 1951, and that is $325. What is the next one for May?

A. May 17.

Q. May 17 is $200?

A. Yes.

Q. That would be $500. What is your next one in May? You have two on the 17th of May. You have a currency of $200 and the other is a check, payroll check. No, it is just a check.

A. Probably an advance check.

Q. It doesn't say advance, does it?

A. No.

Q. But it shows the number of the check?

A. We can run that down.

Q. Let's see if that was for tax work, May we have the ending August 31, 1951?

Mr. Wilkey: May I ask what the designation was on the May 2nd item of $325?

Q. (By Mr. Foreman) What does it show?

A. Salary check and the travel expense check.

Q. Salary check of $250 and a travel expense check of $75, making a total of $325.

Mr. Wilkey: Thank you.

Mr. Foreman: I should say my memorandum is in error on this. It doesn't include that. I have got 5-71-51 but it should be 5-17-51, shouldn't it?

A. Yes, sir.

Q. And then what is that—5-17, you have another deposit of what check number?

A. 27534.

Q. Check number. That would be shown in here 27534?

A. I don't believe it should be on this. This ends 1951 and began in September 1950 and ended in the fiscal year ending August 31.

Q. Then you want the one ahead of this?

A. Yes, sir.

Mr. Foreman: We need No. 1, please, sir.

The Witness: The date of it is—

Mr. Foreman: 5-17-51.

Mr. Wilkey: Just to be helpful, in the interest of time, if this check is dated 17 May, 1951, you should find it in the one ending in August, 1951, which, if my recollection serves, is Exhibit 2. That is where you should find it. You have the number of the check.

Mr. Foreman: It is 1951. It would be in that, that is right. There are different accounts at different places in there?

A. Yes.

Q. You would have to know really—examine several different places unless you know which account it was written on, wouldn't you?

A. Yes, sir. The series of numbers there is 275—27534 and here in May, 1951, we have the series 29300.

Q. I see.

A. But it could have been a typographical error.

Q. Show Mr. Wilkey what you mean. The check deposited was shown on the deposit slip as 27534 but right in May of 1951 when this check was deposited—wait a minute. I think our confusion is 1951 and that is 1951.

A. That is right.

Q. Then we need to get—

The Court: Would it eliminate the confusion if the Court took a recess?

Mr. Foreman: We will try. We will keep working.

The Court: Very well. That is suggested. Court is recessed for 20 minutes.

(Short recess.)

The Court: Be seated, please. Do you think we will be able to speed up the proceedings now?

Mr. Foreman: Yes, Your Honor. We were in the wrong year.

Please find 1951, May of 1951, Mr. Heras. We are talking about check dated May 17, 1951, check No. 27534. Do you find it?

A. It is dated May 17, 1950, Mr. Foreman. Right there in 1950.

Q. I am sorry. 1950. Is that the check—was that what you read?

A. This is 1951 I have here.

Q. When you gave me the check a while ago, was that in the year 1951 or was it in the year 1950?

A. I believe it is in the year 1950. It would be on this page here.

Q. 1951 is all I am asking about now. We have finished 1950.

A. This is dated May 17, 1950, check 27534.

Q. Well, we finished that yesterday. Let's get over to May 1951.

A. All right.

Q. I have them here. You are welcome to them. This is April, 1951, that is where this ends, but find this May, 1951.

A. Here is May, 1951.

Q. What is the first one?

A. The first deposit here is dated May 4, 1951.

Q. And is that for $60?

A. Sixty.

Q. I owe my stenographer an apology. That was currency, was it not, sir?

A. Yes, sir.
Q. And when is this next deposit in May of 1951?
A. It is May 7th.
Q. And it is for currency for $200?
A. $200, yes.
Q. And May 22, 1951?
A. That is $250 but—
Q. Go ahead.
A. —by check.
Q. Then the total for May of 1951 was $510?
A. Yes.
Q. 250, two 60's and 200?
A. Yes.
Q. My books are right then. Now, June of 1951, please, sir?
A. Yes, sir. The first—
Q. 6-14-51?
A. Yes, sir.
Q. Mrs. Diego Heras' check for $100?
A. Yes, sir.
Q. And 6-20-51 was currency, $20 wasn't it?
A. Yes.
Q. And you have got A. V. Barrera, $20?
A. Yes, sir.
Q. Do you know what that was?
A. No, I don't know what that was.
Q. Who was or is A. V. Barrera?
A. He was the tax assessor and collector for the San Diego School District.
Q. And wasn't he also paid by the BISD?
A. Yes, sir.
Q. For how long a period of time?

A. I don't recall exactly, but I think it was about two years.

Q. What years?

A. I don't know whether it was 1949 or 1950.

Q. And who paid him?

A. The School District.

Q. Who wrote the checks?

A. I did.

Q. And what other connections did you have with A. V. Barrera besides putting him on—who told you to put him on the payroll? Did you do it yourself, or Mr. Benson tell you to, or you and Barrera figure it up?

A. No, I was so directed to put him on the payroll.

Q. Who directed you?

A. I don't recall. Either Mr. Chapa or Mr. Parr.

Q. Or Mr. Benson?

A. I don't know. I don't remember now. I do know I was told to, I was told to put that item on the payroll and we made that check every month.

Q. Isn't it true you put him on the payroll to silence him about you and Benson's check-cashing scheme?

A. No.

Q. Did A. V. Barrera write checks on the BISD?

A. No, sir.

Q. Are you sure?

A. I don't know that he wrote any checks for the BISD.

Q. Have you ever under oath testified that you suspected he probably did?

A. No, I don't remember ever stating—making that statement.

Q. Well, specifically, when you were before the grand

jury at San Diego, Duval County, in 1954 you do recall being there, don't you?

A. Yes, sir.

Q. You recall being asked about this A. V., Blondy, Barrera, don't you?

A. I don't recall, Mr. Foreman. I may have.

Q. Well, did you at that time state that it was generally believed there in the office that Blondy Barrera was writing some checks that he didn't have any right to write?

A. I don't remember, Mr. Foreman.

Q. Specifically, I will ask you if you were asked these questions and made these answers.

"During the same period of time, A. V., Blondy, Barrera was on the payroll?

"Answer: Yes."

Were you asked that question and did you make that answer?

A. Yes, sir.

Q. "Question: What did Blondy do?

"Answer: He did the same work of the same nature. He worked with both the San Diego School District and the Benavides School District."

Were you asked that question and did you make that answer?

A. Yes, sir.

Q. And this question: "He worked for the Benavides School District and the San Diego School District?

"Answer: Yes"?

A. Yes, sir.

Q. This question and answer:

"Question: Now, does San Diego School District have its offices there in George Parr's office, too?

"Answer: Yes.

"Question: Now, what did Blondy do?

"Answer: He had authority to sign reports and—"

Interrupted by a question, "He didn't have the authority to sign checks, did he?

"Answer: No. Lots of us felt that he did sign checks."

Were you asked those questions and made those answers?

A. Yes, sir.

Mr. Wilkey: Which checks, San Diego or Benavides?

Mr. Foreman: May it please the Court, may I not be interrupted by counsel's observations and hieroglyphic remarks?

The Court: Yes, we will ask that you not interrupt.

Mr. Wilkey: He was asking a question. It is obscure as far as the record stands now whether San Diego or Benavides.

The Court: It is the witness under oath who is being tested here, and I will suggest both counsel, whatever you want to develop, you develop from the witness.

Q. (By Mr. Foreman) Then the total for June, 1951, Mr. Heras, was a $140 deposit in the San Diego State Bank, wasn't it?

A. Yes, sir.

Mr. Wilkey: Mr. Foreman, I may have missed one of those. I have a $100 and a 20. Would you give me the other?

Mr. Foreman: You have one deposit of 6-14 of $100 and one on June 20, 1951 which carried two items, currency of $20 and A. V. Barrera of $20, making $40, and that was the total deposits, your wife's check and this other check of $40, making a total of $140 was all that you deposited in that bank in June of 1951, wasn't it?

A. Yes, sir.

Q. Where was your wife's account during 1948, 1949 and 1950 and 1951, what bank?

A. My best recollection was the Merchants Exchange Bank in Benavides, Texas.

Q. Did she have any right to write checks on the Nuevo Laredo bank account?

A. No, sir. I never had an account in Nuevo Laredo.

Q. Oh, you didn't?

A. No, sir.

Q. A safe deposit box?

A. No, sir, I never had any safety deposit box.

Q. Let's get to 7-9-51. That would be July of 1951?

A. Yes.

Q. And the deposit on that date was simply your salary check of $250, wasn't it?

A. Yes, sir.

Q. And then there is between it and 7-16-51, without any date on it, a deposit of $10.05, being a check of Jose R. Gonzales?

A. Yes, sir.

Q. And then on the 16th of July, 1951, simply a check for $5.71?

A. Yes, sir.

Q. Being the total for July of $265. That is all you deposited in July in the San Diego State Bank, wasn't it?

A. Yes, sir.

Q. Now, do you have there your Merchants, any Merchants Exchange Bank?

A. No, I don't.

Q. Do you have any other deposits at all or did you make any other deposits at all before August 25, 1951? When is your next deposit there? Do you have August 25, 1951?

A. Yes.

Q. And you made one deposit?

A. $30.

Q. And that was the only deposit in August, wasn't it?

A. That is the only one I see in this photostat copy.

Q. All right, sir. Do you recall any others?

A. No, I don't recall.

Q. And in the month of September—by the way, you made on September 5, 1951, you deposited a check in the Merchants Exchange Bank—on the Merchants Exchange Bank for $100, didn't you?

A. Yes.

Q. And in December, the only deposit you made was the proceeds of a note, of a $450 note, which you executed on December 12, 1951, for $450, deducting $7.50 interest, leaving $442.50, isn't that true?

Mr. Wilkey: You lost me. You went from September to December.

Mr. Foreman: Sure. You didn't have any deposits in October or November?

Mr. Wilkey: But are we getting to the December deposits now?

Mr. Foreman: Yes, sir.

Mr. Wilkey: Just wanting to be clear.

Q. (By Mr. Foreman) You didn't have any deposits in October or November, did you, in 1951?

A. I don't see any photostat copies of deposits.

Q. Do you recall having made any in November—October and November of 1951 in the San Diego State Bank?

A. I don't recall.

Q. But you did make one on December 12, $450 note, less interest of $7.50, isn't that true?

A. Yes, sir.

Q. The total deposits for the year 1951, averaging them out on a 12-months basis, would have been just about your salary, total deposits of $3,474.26, plus your expense accounts, wouldn't it?

A. Yes, sir.

Q. Who was signing checks in 1951, countersigning them? George B. Parr?

A. 1951 beginning—

Q. In June of 1950. From June of 1950 and throughout 1951, didn't George Parr countersign the checks?

A. He started countersigning checks about June of 1950.

Q. And continued throughout 1951, didn't he?

A. I believe so. I don't remember, but he did—he began signing checks, countersigning checks, in the month of June of 1950 for a long time. I don't know it was carried out through December of 1951 or not. I don't recall.

Q. And didn't your deposits, when George Parr started countersigning the checks, go down approximately 70 per

cent to what they were the preceding 18 months while W. M. Benson was countersigning checks?

A. I don't know what percentage of decrease there was, but—

Q. But you had in 1949, to help you arrive at that percentage, deposited $12,372.32 in this one bank, hadn't you?

A. Yes, sir.

Q. And commencing—and the deposits continued, $1,195, $1,092, $1,250, $1,012.81, $1,310, right down to June 26, 1950, didn't they?

A. Yes, sir.

Q. And commencing with July of 1950, isn't it true on June 26 was when George Parr fired Benson, got mad and accused him of stealing?

A. I don't know that he accused him of doing that, but I do know he started signing checks in June of 1950.

Q. It was the latter part, wasn't it?

A. I don't recall whether it was the latter part of June or not.

Q. Isn't it true that your deposits steadily went down, dropped off, first to half and then to a third and at last to where in the final month of 1950, you only deposited $30, isn't that true?

A. Yes, sir.

Q. Now, what other title besides auditor did William Marvin Benson have during this period of time 1948, 1949, and the first half of 1950? Was he not office manager also?

A. He was office manager, yes.

Q. And what happened in the latter part of June, 1950, with reference—did you all run out of funds, you and Benson, in any one of those accounts you all were writing

checks on, or all of the accounts? Did the School District go broke? I don't mean by that out of business, but did they run out of funds?

A. There was a deficiency, yes, that was brought about by some projects that were going on, and we ran low on funds. I don't know the amount of the deficit.

Q. Was it such projects as represented by 17-A through P, fictitious projects that you and Mr. Benson were carrying on paper? Is that what became of the money that brought about the anger, ire of George Parr in June of 1950 against W. M. Benson?

A. I don't know that that caused it, but I do know we had some projects going on then, and they were consuming a lot of money.

Q. You mean a lot of money was disappearing from the bank and from the accounts of the BISD during the course of some building at Freer, don't you?

A. Just about that time, yes.

Q. That building had been budgeted and it was supposed to be enough money in the accounts set aside to take care of the building program at Freer, wasn't there?

A. Yes. A certain amount of money was appropriated for the projects, but they were modified and the cost of the projects was hiked in some cases about 50 per cent.

Q. You mean 50 per cent more money was spent than should have been spent if you and Benson had kept within the budget allocated for the building, don't you?

A. We didn't touch the funds for the building.

Q. Sir?

A. We didn't touch those funds for the building. The money that was appropriated for those projects came out of the building fund, and we ran short of funds on ac-

count of those buildings. That is as far as I can remember, and we decided to talk it over with Mr. Parr.

Q. Isn't it true that you ran out of funds because you and Benson, in 1948 and 1949 and 1950, were writing fictitious, fraudulent checks similar to and very much like the ones represented here by 17-A through P, and keeping the money?

A. No, sir.

Q. Well, did or not George Parr accuse Benson of you all—of Benson having done that at any rate?

A. I don't recall. It was not done in my presence.

Q. Do you recall Mr. Parr becoming, in the latter part of June, violently angry and having words, and questioning the honor of and integrity of W. M. Benson?

A. I don't recall.

Q. Well, what do you recall about the occasion of W. M. Benson ceasing to countersign the BISD checks in the latter part of June, 1950?

A. What I can remember is that we—Mr. Benson and myself decided to go over to see George Parr and tell him the condition of the School District.

Q. Go over where?

A. To see him.

Q. Where was he?

A. We looked for him, and we found Mr. Parr at the County Shop.

Q. Where is and what is the County Shop with reference to the Parr Building, and the Court House in San Diego?

A. It is across the street from the Duval County Court House.

Q. In what direction?

A. To the south.

Q. And the Parr Building is across the street from the Duval County Court House in what direction?

A. To the east—to the west of the court house.

Q. Then you went from the offices of the School District in the Parr Building to the County—is that the shop where the road machinery and county property is kept and repaired?

A. Yes, sir, that is correct.

Q. And about what time of day did you get there?

A. I believe it was in the morning, close to noon.

Q. And did you and Mr. William Benson have any discussion about what you were going to tell Mr. Parr, or what Mr. Parr's reaction was going to be when he found out all that money appropriated for the Freer building had disappeared?

A. We discussed—we talked about the condition of the School District, brought about by several factors, and we decided to talk it over with Mr. Parr, and went over and talked to him.

Q. Did either one of you say, "When he finds this out, he is going to hit the ceiling"?

A. I don't believe we did. We suspected that he wouldn't like it.

Q. You suspected he would be highly angry, didn't you?

A. Well, yes, not too mad, but still we felt like he should know about the condition of the School District.

Q. You felt like boys that had been stealing peaches and your mamas had found it out, didn't you?

A. No, sir.

Q. Well, what was the reaction when you and Mr. William Marvin Benson reported to the financial adviser of the board that you were out of funds?

A. After the conversation at the shop, we left.

Q. Before then, Mr. Heras. What did Mr. Parr say when Benson told him that the funds for the building at Freer were exhausted? Did he say, "Well, that is all right, boys," or did he say, "You have been stealing, you so-and-so"?

A. I don't recall what he told us then. I do believe—I think he told us that he would see us later.

Q. Did he appear to be angry?

A. I believe he was, yes.

Q. And he used some rather strong language to both of you all, insinuating that Benson, at least, was a thief, didn't he?

A. No, not in my presence.

Q. What did he say that caused you to believe that he appeared to be angry?

A. It was about knowing that the—that there was a deficit in the School District funds, but he did not say anything hard to us there in the shop. I do recall, I think, on second thought, that he told us he would see us later, which he did.

Q. He first went—by the way, did he tell you Delaney had told him he believed you and Benson were stealing school funds?

A. I don't—no, I never heard anything like that.

Q. You did not?

A. No, sir.

Q. Is this the first time you have heard it?

A. This is the first time I have heard it, yes.

Q. Mr. Heras, did George Parr—first, tell us what funds these checks had been written on? You had some 13 or 14 funds, didn't you?

A. No, I don't know how many funds we had. I think it was either five or six.

Q. Well, wasn't each fund represented by a separate account in the Texas State Bank at Alice?

A. Yes, sir.

Q. And it is your tseimony that there were only five or six such accounts at the Texas State Bank in Alice?

A. That is my best guess. We did have, to begin with, the Local Maintenance fund, the State and County fund and the Sinking fund, and then two or three different Building funds.

Q. You had several Bond Series funds, didn't you?

A. Yes, we had, I believe, the 1948 and 1949 series, the 1950 series, and one of those series was, I believe, spilt up into different accounts, but I don't know that we had more than—there might have been a little more than six, but I don't think it was 15 different accounts.

Q. I didn't say 15. I said 13 or 14. Didn't you have two Free Building Fund accounts?

A. Yes.

Mr. Bottler: During what period of time?

Q. (By Mr. Foreman) What period of time did you have those you are telling us about?

A. 1949, 1950.

Q. All right. Then after the time that Mr. Parr got mad when you and Benson told him about the condition of the funds, you had all of the accounts you have named, didn't you?

A. Yes, sir.

Q. And didn't you have two separate building fund accounts for Benavides?

A. Yes, sir.

Q. Then just for building funds alone, in addition to all you have mentioned, you had four accounts, didn't you?

A. Yes.

Q. You have mentioned at least nine or ten other accounts in your testimony here, haven't you?

A. I don't recall.

Q. Which of those accounts was it that was affected? Were there more than one, or was it only one?

A. I don't recall. I don't remember exactly where the deficit occurred, either in the Freer Building Fund or the Benavides Buildnig Fund, but we were running short of funds.

Q. Assuming for the purpose of my question it was the Freer Building Fund, were there two Freer Building Funds and were both of them flat broke, or wasn't all this money that had been checked out from one of the two building funds of Freer?

A. I don't recall because we had two projects going on at the same time at Benavides and Freer, and all I can remember is that there was a deficit in the funds, and I am inclined to believe it was the building fund.

Q. You know it was the Freer Building Fund, don't you?

A. No, I don't know offhand because I don't remember how my books were then, but we did have some projects going on in Freer and Benavides.

Q. How long had it been since the last report that you and Mr. Benson had made of the condition of that fund to George Parr, the financial—supervisor of the financial department of the School District? How long prior to June of 1950 had it been since you all had last reported the condition of that fund?

A. I don't know what time it was.

Q. How long had it been prior to June of 1950 since George Parr had looked at the books?

A. I am inclined to believe that he knew about the money when he came in, the money, the bond issues, the condition that started the building—the funds, but I don't know just when he looked into those books.

Q. My question has nothing to do with what you are inclined to believe. I only asked you the simple question. You don't know how long before you had told him about the funds, and now my question is, how long prior to June 20 and he, George Parr, superintendent of the financial department of the BISD, looked at the books? Do you know or not?

A. Well, he was—we showed the books to him very regularly. He was just two doors from our office, and he called me into his office and he checked the books, but I don't know just how long before that.

Q. Had it been a month, six months, a year?

A. No, I don't believe it was too long. I don't think it was over a month. Mr. Parr had a ledger in his office where he kept record of the checks, but I don't know just how long—the time between the last review of the books before we decided—but I do know that he kept a record himself.

Q. Is it your statement that Mr. Parr kept the books in his office and therefore knew the condition of the funds, or that fund, that you and Mr. William Marvin Benson finally decided to go and tell him about?

A. I don't know whether he kept the balance of it, but he did write out the name, the number of the check, and the amount of the check on different funds, but I don't know whether he knew what the balance of those books was.

Q. But if he had known the balance of the books, there would have been no reason for you and William Marvin

Benson to seek him out at the county garage and inform him, would there, Mr. Heras?

A. No. I think that what he knew, that he went by the bank there, even though he didn't see our books, he went by the bank there and saw our checks.

Q. I'm not talking about checks. I am talking about books, the balance and the unexpended balance. George Parr didn't know how much money you and W. M. Benson had checked out of that account, do you?

A. I don't know. He might have been, had an idea.

Q. How did you and W. M. Benson decide to go as a committee of the whole, the both of you together? Was it because you were both responsible and both wanted to share the blame?

A. No, sir, I didn't feel we had done anything wrong. It was—we went in the red on account of several things that came—we came across, like low estimating the project and things like that that made us use more money. I don't believe the deficiency was caused in their operating funds.

Mr. Foreman: May it please the Court, I submit the answer is not responsive. He is volunteering and leading and evading the question. I ask that he be directed to answer the question as asked.

Mr. Wilkey: I think he answered the question, in effect which called for reasons why, and that is what he gave.

The Court: Would you read the question?

The Official Reporter (Reading): "Question: How did you and W. M. Benson decide to go as a committee of the whole, the both of your together? Was it because you were both responsible and both wanted to share the blame?"

The Court: The question asks why and calls for an explanation. Whether the answer is satisfactory or not, I am unable to say. If not, you may interrogate him further.

Mr. Foreman: I will proceed with another question.

Mr. Heras, was there any significance in the fact that the two of you sought him out away from the office as distinguished from waiting for him, perhaps, to come to the office?

A. We decided to go see him at any place we could find him.

Q. At what, sir?

A. At any place where he could be or might be.

Q. If you hadn't found him at the county garage, you would have gone on down to the Chevrolet agency, and if not there, you would have gone to the Ford agency, is that true?

A. Yes, sir. We were looking for him.

Q. And if not there, you would have gone to the ranch, wouldn't you?

A. I don't know if the thing was really urgent. I believe we could have gone to his ranch, but we were looking for him and saw where he was, so we decided to go over there and talk to him.

Q. My question is as to the urgency. You would have gone to the ranch if you hadn't found him anywhere else?

A. Well, I don't think so.

Q. You would have gone to the stables?

A. No, I think that the deficit was important enough, but we could have caught him there in the office but we—I don't know—perhaps we thought he wouldn't be coming to the office and we walked over to the County Shop to see him. I don't know that it was really too urgent, to go

as far as 50 or 60 miles to look for him, but I think we decided to see him while he was close around the office.

Q. You thought perhaps he wouldn't come to the office, didn't you?

A. That is perhaps right because sometimes he didn't come to the office.

Q. Sometimes he didn't come to the office for days, is that true?

A. Well, he was in and out most every day. He might have stayed three or four days away from the office.

Q. Isn't it true that George Parr is essentially an outdoor man and not an inside man?

A. Yes, sir.

Q. And isn't it true that he spent a great deal of time at his various ranches and investments outside of the City of San Diego?

A. Yes, sir.

Q. And isn't it true that it was a rarity when he would come to the office?

A. No, I don't believe it was a rarity.

Q. And when he came, he only came to meet somebody and would be gone again in a few minutes?

A. No, sometimes he staved in the office all day, and sometimes he was in and out.

Q. Sometimes he wouldn't be there over a minute or two, or a few minutes, isn't that true?

A. Yes, sometimes he rushed in and came out again.

Q. But you all did not know where he was when you set out on your search for him, and eventually found him at the garage, did you?

A. No, I think we were looking for him all right. We discussed about talking things over with him, and we saw him at a county barn or a county warehouse or shop, where

he went every morning, most every morning, and we just went out there and talked to him.

Q. How much, Mr. Heras, was this building fund account overdrawn? How much deficit was there there? How much was there at the time, late June, 1950, when you and Mr. William Benson told the superintendent of the financial department, Mr. Parr, about the condition of the account?

A. I don't recall the amount of the deficiency, but it was over ten or fifteen thousand dollars.

Q. Then you had written and the auditor had countersigned checks in excess of $15,000 above what was in that account, hadn't you?

A. We signed any checks that were duly authorized.

Q. I didn't ask if they were duly authorized. I asked you an ultimate fact. Had you not, as maker, and had not William Benson, as countersigner, authorized, set in motion, written checks in excess of $15,000, hot checks, checks you had no legal right to write, had you not?

A. Yes, we had been directed—

Mr. Wilkey: That is a compound question, Your Honor.

The Court: Yes. I suggest it be broken down.

Q. (By Mr. Foreman) Had you all—had you signed every one of these checks that made up a $15,000 overdraft? Had you?

A. Part of them, yes.

Q. Had W. M. Benson countersigned them?

A. Yes, sir.

Q. Whose duty was it to watch and see that the accounts were not overdrawn?

A. It was the auditor.

Q. Who was he?

A. W. M. Benson.

Q. Did you have any responsibility in that regard?

A. I don't think so. I was acting secretary, but still derived the power from the Board of Trustees, and if we made any check overdrawn on the account, we were so directed to do so.

Q. Let me see if I recall that. "I was authorized and empowered by the Board of Trustees, and if I overdrew, I was authorized to do so." Did I correctly quote your answer, or did I misquote it?

A. I think you are right. I was so directed to do so.

Q. You were so directed to do by the Board of Trustees?

A. Yes, sir.

Q. Did a single member of the Board of Trustees, either Richard Barton, Octavio Saenz, J. G. Garza, or C. G. Ramirez, tell you to write a single one of those $15,000 of overdraft checks?

A. They didn't tell us directly, but they let out the contracts for so much money, and they kept increasing the amounts and all we knew was that we were supposed to pay those bills as they came in for those buildings, which we did.

Q. Well, did a single one of the BISD Board of Trustees, Richard Barton, C. G. Ramirez, Octavio Saenz or—Garza, Saenz, Ramirez, Barton, know that you had written hot checks on the BISD to the amount of $15,000 before you told the superintendent of the financial department, George Parr?

A. I believe—I know that Mr. Benson warned the boys about increasing the projects in Freer and Benavides with the money we had, and I am positive that Mr. Benson mentioned either to Mr. Saenz or Mr. Chapa about the condition of the funds before we went to George.

Q. I didn't include D. C. Chapa in that question. Did you understand me to do so?

A. Yes, sir. That is what I understood you to ask me.

Q. I will rephrase the question, Mr. Heras, if you will listen. Did any member of the school board, either C. G. Ramirez, Richard Barton, Octavio Saenz, or J. G. Garza, know that you had written hot checks on the Benavides Independent School Disrict Building Fund account before you and W. M. Benson told financial supervisor George B. Parr in late June of 1950 that you had done so?

A. I don't know.

Q. Don't you know that they didn't know it?

A. I still don't know whether they did or not.

Q. What is your best judgment whether any one of these four members of the school board knew it before you told superintendent of the financial department, George Parr, of the overdraft?

A. I think that they knew indirectly that the funds were low.

Q. That they knew indirectly that the funds were low? Do you understand that as an answer as to my question as to whether they knew of the overdraft?

A. I said that I do not know that they did know or didn't know about it.

Q. Well, then, when you voluntarily say that you were empowered by the Board of Trustees to write those hot checks, you were not telling the truth, were you?

A. I didn't get the question.

Q. Did you not say a while ago that if you wrote overdrafts you were empowered to do so by the Board of Trustees of the BISD?

A. I would say that we were so directed to write out those checks or pay those accounts, but I really don't know whether they knew about the deficit or not.

Q. Isn't it true that all you mean when you say you were

so directed to write out those checks is that you and Benson had the responsibility of seeing that the bills, honest bills, were paid when there was money to pay them, isn't that all you mean?

A. I get it that if we had to pay some bills, our understanding was just to go ahead and pay the bills, and sometimes we ran—overdrew the accounts, and we asked money from the bank, but getting back to the question, I don't know whether they knew about it or not.

Q. The question is the only thing I would like you to get back to, and not getting away from bills, Mr. Heras, did any member of the Board of Trustees of the Benavides Independent School District ever tell you to write a hot check when there was no money in the bank?

A. I don't recall that they did.

Q. So far as you know, did any of them ever know when you were writing, if you did write, such hot checks?

A. I don't know, Mr. Foreman. They only—

Q. Sir?

A. The only thing I know is that Mr. Benson would caution them at the board meetings about the money they had spent.

Q. Did Mr. Benson at the board meetings ever tell any of them, "You had bettter put some more money in the bank because there is not enough for the building and me and Diego too?"

A. No, sir.

Q. Well, now, except for such spurious, fictitious and fraudulent checks as you and Benson were writing in 1948, 1949 and the first half of 1950, there would have been plenty of money in the building fund at Freer, of the building fund at the Texas State Bank, to have finished the building, wouldn't there, Mr. Heras?

A. Yes, I suppose so if we hadn't drawn all those spurious checks, those fictitious checks to fictitious persons. I believe we would have had money in the bank to finish the project.

Q. And every one of those spurious, fraudulent and fictitious checks that overdrew that account was signed by you as maker and W. M. Benson as cosigner, and only those signatures, weren't they?

A. Yes, sir, we were so directed.

Q. And it was that act of those overdrafts, or the act resulting—the overdraft resulting from those acts about which you went to inform George B. Parr in the latter part of June, you and your friend and benefactor, W. M. Benson, correct?

A. I think that the question covers all funds, but what we went to talk to him about was the condition of money in funds to build those projects.

Q. And then it was when you revealed the condition of the funds brought about by your spurious, fraudulent and fictitious checks that George Parr became violently angry, wasn't it?

A. I don't know that he got mad about that. He got angry about the condition of the funds we went to see him about. I don't know that the deficiency covered the operating fund.

Q. Yet you say that George Parr kept a ledger on his desk of all of those fraudulent, spurious, fictitious funds, and therefore is bound to have known that the funds were exhausted, is that your testimony?

A. I know that he had a record of the checks, and I believe the balances. I secured a book, a book of ledger for him, and he would enter in that book the checks, the amounts, and the check number and payee.

Q. Of all checks?

A. Yes, sir.

Q. Good and bad?

A. Good and bad.

Q. Then he is bound to have known if he could add, and he could add, couldn't he?

A. I think so.

Q. As a matter of fact, George Parr is a graduate of Southwestern University at Georgetown and the University of Texas Law School, isn't he?

A. I don't know. I know he graduated from some school, but I don't know if it was Texas University or Southwest Texas Law.

Q. Do you know he is a licensed lawyer?

A. Yes, sir.

Q. You know he could add?

A. Yes, sir.

Q. You know he is bound to have known what was in the funds, as supervisor of the financial department of the BISD, bound to have known what was in each of the accounts if he kept that book you are talking about, don't you?

A. Either he could know by the books he kept or going to the bank, to his bank where he kept the accounts.

Q. Let's settle for the books you know he kept because you saw them?

A. Yes, sir, I saw them. I bought that book for him, and he would enter the checks in that book.

Q. And didn't you buy that book for him and he started entering the checks when he started countersigning the checks after firing Benson for stealing?

Mr. Wilkey: That is about a triple parallel question, Your Honor. It contains several questions.

Mr. Foreman: I will break it down.

Did he fire Benson for stealing?

A. I don't think so.

Q. Did Benson quit when he accused him of stealing, and never signed another check for the BISD?

Mr. Wilkey: That contains the assumption he accused Benson of stealing, which is not in the record except from the mouth of Mr. Foreman.

Q. (By Mr. Foreman) Did he accuse Benson of stealing?

A. He didn't from my presence.

Q. What did he say to Benson about the shortage?

A. The best I recall it he said he would see us later, and he wasn't mad then. It was in the morning, and we discussed the matter with him and we left.

Q. And when did he see you next?

A. It was that same day, in the afternoon.

Q. About what time?

A. I judge it must have been two or three o'clock in the afternoon.

Q. And meanwhile, had he got to Benavides and met with the BISD Board of Trustees of the Benavides schools, Mr. Saenz, Mr. Ramirez, Mr. Garza—

A. I don't know, Mr. Foreman, whether he did or not.

Q. And Mr. Delaney?

A. I don't know. I was not there.

Q. Well, when he came back, did he tell you that the board had asked him to countersign the checks hereafter?

A. No, I don't believe he mentioned the board at all. His instructions that day after we had that conversation

at the shop was almost brief. He came in and asked for Willie Benson. That was about two or three o'clock in the afternoon that same day.

Q. He came in and asked for Willie Benson?

A. Yes.

Q. Who did he ask for Willie Benson?

A. He directed his questions to Miss McCoy.

Q. Where was Willie Benson?

A. Mr. Benson was out of the office.

Q. Go ahead.

A. And then Mr. Parr instructed Miss McCoy that from that day on, he wanted to countersign all of the school district checks of the BISD.

Q. Didn't he tell her the board had authorized and directed that?

A. No, sir, I don't believe so. I don't believe he mentioned the board at all.

Q. Did he tell Miss McCoy that no one else was to countersign checks except himself?

A. Yes, sir, that is what his instructions were.

Q. Prior to that time, who had countersigned checks?

A. Mr. W. M. Benson.

Q. Only he?

A. And some checks were countersigned by Miss McCoy.

Q. In whose name did she sign them, Ocie McCoy or W. M. Benson?

A. I think she would sign them Miss Ocie McCoy.

Q. Do you know whether or not there was ever such an authorization at the Texas State Bank for Ocie McCoy to countersign checks?

A. I never saw one.

Q. Did you ever see any authorization at the Texas State Bank for D. C. Chapa to countersign checks in 1949 or 1950?

A. Yes, I believe I saw a signature card at the bank.

Q. On the BISD accounts, or on his own account?

A. The School District account.

Q. To countersign School District checks?

A. Yes, sir.

Q. By the way, I believe you stated that all of the time that the School Districts were at San Diego from 1938 to 1951, that D. C. Chapa was regularly there at the office in San Diego in the Parr Building?

A. He was, and very often. I would say every other day.

Q. All day?

A. No, he would remain there from 15 minutes to two or three hours.

Q. Every other day?

A. Yes. I would say every other day. He wouldn't stay there two or three hours every other day. He would stay 15 or 20 minutes, but sometimes he stayed in the office with Mr. Parr two or three hours.

Q. But in the course of a week, he would normally spend 9, 10 or 15 hours a week at the offices of the BISD in the Parr Building in Benavides, between the years 1948 and 1951, is that your testimony?

A. Well, all I can answer is that he came to the office very often. It was at least every other day when he was in town.

Q. Granted him, for the purpose of the question. Did it aggregate 15 or 20 hours a week he would spend there?

A. No, I don't think so.

Q. How much would you say he did spend there?

A. Well, it is hard to determine now how long he stayed in the office there. Sometimes he would visit Mr. Benson and talk to him 15 or 20 minutes, or more. In other instances, he would go in a huddle with Mr. Parr in his private office and stay there an hour or two hours. It is hard. I don't know whether it averaged 15 or 20 hours a week or not. I don't know.

Q. I am not asking you to be definite, and I realize it would be impossible to do that, but it is your best judgment as to the number of hours per average week he would spend there during the years 1948, 1949, 1950 and 1951 until the books were moved back to Benavides?

A. I can't make any guess.

Q. Well, did he supervise the work of the various employees there in the office, check on the instructions and directions?

A. In what office? The San Diego office or the Benavides office? We have two offices.

Q. San Diego. That is all I am talking about, for the years 1948, 1949, 1950 and the first half of 1951.

A. No, sir.

Q. As a matter of fact, isn't it true that the offices in San Diego were carried on in the name only of D. C. Chapa, and that he seldom ever came in there, at, near or about those offices?

A. Well, he came into the office every other day, like I said before.

Q. All right.

A. And—I guess as to the supervision, why, he knew who were on the payroll and also knew about the tax assessing angle of it too.

Q. He was familiar with the tax assessing, he knew how to make up a tax roll?

A. No, sir.

Q. He did not?

A. I would say that he knows how to read and write, but he doesn't know—I don't know that he made a tax roll.

Q. You would say that he knows how to read or write, you would say that?

A. Yes, sir.

Q. Can he use a typewriter?

A. I don't know whether he can use a typewriter. I believe he could, picking a key at a time.

Q. It would take him about 30 minutes to write his name on one, wouldn't it?

A. I don't know. His name is not too long.

Q. Would you say he can do it in 20 minutes, if he rushed?

A. I don't know.

Q. Haven't you sworn heretofore he couldn't use a typewriter at all?

A. He didn't use one in my presence, and I don't know that he could use one. I just imagine he could write his name on the typewriter.

Q. Isn't it true, Mr. Heras, that every time D. C. Chapa wanted a letter written to anybody while you were working, he would come to get you to write it and that was the reason of his coming, and the only reason of his coming to the office?

A. Not necessarily. He would request either me or the other girls in the office there to write a letter in typewriter.

Q. As a matter of fact, that is customarily done there in Duval County, and it is a profession you set yourself

up in as Heras & Heras, your main business, to write letters for such people as D. C. Chapa, who were illiterate and had never gone to school and couldn't read and write, isn't that true?

A. Yes, sir.

Q. And you know for a fact D. C. Chapa never went to school one day in his life, and never cracked a book as a student, don't you?

A. Well, I don't know how to estimate the amount of education he had, but I know he went to the county school. I know he knows how to read both English and Spanish language.

Q. Tell us one county school he ever went to?

A. I don't know.

Q. And you don't know whether he ever went to school a day in his life, do you?

A. I think I have heard the story about his attending school in the place he was born.

Mr. Foreman: May it please the Court, that is hearsay, we submit, and not admissible and we object to it as not responsive.

Mr. Wilkey: It depends on from whom he heard the story.

Mr. Foreman: I asked if he knew of his going to school a day in his life.

Mr. Wilkey: It depends on who he heard it from.

The Court: You asked him if he knew of it. It seems to me you are giving him a rather searching examination,

however, I will ask him to exclude what he knows by hearsay. You may ask him if he ever saw Mr. Chapa in the schoolroom.

Q. (By Mr. Foreman) Did you ever see Mr. Chapa in a schoolroom as a student?

A. No.

Q. As a matter of fact, Mr. Chapa—

A. He has been in school, but not as a student.

Q. All right. Now, getting back to Ocie McCoy and George Parr telling her hereafter he would countersign all checks. Did he appear to be angry at that time, George Parr?

A. Yes, he was. He was mad.

Q. And did he say then that somebody had been stealing school funds?

A. No, sir. I don't recall him saying anything like that.

Q. Were you present all the time George Parr was there on his return the afternoon you—the day you and Marvin Benson told him about the shortage?

A. I was there when we discussed the matter to him, and I was there when he came in that same day in the afternoon to give new instructions. Mr. Benson was not there, but Miss McCoy was and myself.

Q. Did Mr. Benson ever come in that afternoon?

A. I don't remember whether he did that afternoon or not.

Q. If he did, you would have seen him?

A. Yes, if he had been by the office, I would have seen him.

Q. But you heard no conversation there in the office between Benson and Parr that afternoon just after he

had told Miss McCoy about the countersigning of the checks hereafter?

A. No, sir, I didn't hear any conversation between him and Mr. Benson.

Q. Then at no time that day, either morning or afternoon, did George B. Parr accuse W. M. Benson of grafting on the school board?

Mr. Bottler: That calls for a conclusion.

Q. (By Mr. Foreman) Well, did you hear it?

The Court: Could it be a conclusion if he heard him accuse him of grafting? The question is, did you hear him accuse him of grafting.

Mr. Wilkey: It wasn't the question until Mr. Foreman amended the question after the objection, "did you hear," I believe the question was.

The Court: Let's return to the question.

Mr. Foreman: Let me rephrase it, in the interest of time.

The Court: Very well, you may.

Q. (By Mr. Foreman) Did you hear George B. Parr, either in the morning or afternoon of the day you and Marvin Benson told him about the shortage, accuse Marvin Benson of grafting?

A. No, sir.

Q. Would you have heard it at any time you were

present? Were you close enough to have heard it if he had told Marvin Benson that in your presence?

A. Yes, I believe I would have heard it.

Q. Do you know how much money Marvin Benson was drawing on his salary as auditor and office manager?

A. I don't recall exactly. I think it was in the neighborhood of $300.

Q. A month?

A. A month.

Q. Do you know whether or not in 1948, 1949, and the first half of 1950 he spent $225,000?

A. No, I don't know.

Q. You don't know?

A. No, sir.

Q. Let's just break it down for a few items, and see what you know about his business. Do you recall his buying the Reynolds Well Service Company in 1948 or 1949?

A. He bought some work-over and rotary rigs, but I don't know who he bought them from.

Q. On March 31 of 1949, do you know whether or not he spent approximately $70,000 to buy a well servicing company?

A. No, sir, I don't.

Q. Well, did he, William Marvin Benson, operate under the trade name of Reynolds Well Service from March 31, 1949 to May 4, 1950, or do you know?

A. No, I do not know.

Q. And did he ever operate under that name, to your knowledge?

A. I recall the Reynolds Well Service, and I knew Mr. Reynolds, and as far as I know, Mr. Benson was the auditor for Reynolds Well Service, but whether he owned the

equipment, I don't know. I never saw—I didn't—I haven't seen the deed or anything.

Q. Mr. Heras, didn't you work on some of Mr. Benson's own business books?

A. No. I don't think that I ever handled any of his clients' books other than a few typewritten work that I did for him in the way of reports.

Q. Do you understand me to say clients, or William Benson's books? I didn't say clients. Did you or not—

Mr. Wilkey: That is a fair interpretation. An auditor's books might be referred to also as his clients.

The Court: The question was, did he work on Mr. Benson's books and I think now Mr. Foreman is clarifying it.

Mr. Wilkey: I must object to Mr. Foreman's policy of accusing the witness of intentionally answering another question when the questions Mr. Foreman ask, like Mr. Benson's books there, as an auditor, and as many books, are susceptible to more than one interpretation.

The Court: The question itself in my mind is not susceptible of another interpretation. It may be susceptible of another interpretation from facts in the mind of the witness. I do not believe the question itself is susceptible of another interpretation. The question is, "Had you worked on Mr. Benson's books?" From the question itself, I would interpret that you mean Mr. Benson's books. The answer concerned books of clients.

You may continue with your questioning, Mr. Foreman.

Q. (By Mr. Foreman) Isn't it true Mr. W. M. Benson

operated, under three different or four different names, businesses of his own, to-wit during the years 1949 and 1950, those being the names Reynolds Well Service, WM&W, Well Service Company, Inc., Benson, Powell & Morrison, Auditors, and W&M Drilling Company? Is that true or not, if you know?

A. I don't know.

Mr. Wilkey: That is a compound question. Oh, he has answered.

The Court: You have asked the question that way. Unless the witness can answer all questions yes, I think he is entitled to say no.

Q. (By Mr. Foreman) Do you know whether or not W. M. Benson operated or had an interest in or kept books for his own company, the WM&W Well Service Company, Inc. in 1949, 1950 and the first half of 1951?

A. No, sir, I don't know.

Q. Did you hear that name?

A. Yes, sir, I have—I am familiar with the Reynolds Well Service, and I have seen their trucks but I don't know the connection between Mr. Benson and the companies, whether he owned a 50 per cent interest or any interest at all.

Q. Do you know about the same information with reference to the WM&W Well Service Company? Have you seen their trucks and know that he audited their books, but don't know what other connection?

A. Yes, sir. I know he audited the books, but I don't know whether he had any interest in the companies. He may have had, but I never saw the deed or anything

Q. Well, did he write checks on their accounts, to your knowledge?

A. Yes, the checks for those company employees were made there in the office.

Q. Were they signed W. M. Benson?

A. They were signed W. M. Benson, but I don't know that he owned the equipment.

Q. Do you recall when he bought or established the W&M Drilling Company?

A. Yes, I remember that. I remember the name.

Q. And did he or not write the checks to pay the bills of that company?

A. I don't recall, Mr. Foreman. I don't recall. Checks for different companies were made there in the office and I don't remember whether some of those sets of books or checks were made to WM&W Drilling Company.

Q. Isn't it true that up until the latter part of 1948 and the years 1949 and 1950, up until latter 1948, W. M. Benson was just a struggling bookkeeper, a working man?

A. I don't know.

Q. Just about like you, except for making a little more money, isn't that true?

A. I don't know. I don't know his financial status as to the years 1948 and 1949.

Q. I am talking about before 1948. Before this commencement of the writing of the spurious, fraudulent and fictitious checks, he had difficulty making office rent, didn't he?

A. I don't know.

Q. Isn't it true that after you and he commenced authoring those checks, you writing them and him countersigning them, and you taking them to the bank, W. M. Benson went into three different businesses requiring the investment of $225,000?

A. No, sir.

Q. It didn't happen?

A. I don't know that it happened during that time. I didn't know that he invested about a quarter of a million dollars in equipment.

Q. You say you didn't know it or you did know it?

A. I do not know it.

Q. Do you know he didn't do it?

A. No.

Q. Do you know he built an office building for about $25,000 in the City of Alice?

A. I don't know whether he built the office. I know where the office is, but I don't know who built it.

Q. Is it his?

A. I don't know. I don't—I haven't seen the deed to the ground where the building is, and I don't know who built it or who paid for it.

Q. Did he ever tell you he owned it?

A. I don't believe he did.

Q. Doesn't he operate his business from there now in Alice, from this office building I am telling you about?

A. I don't know. I haven't been to that office in two or three years. I don't know whether he is still operating from that building or not.

Q. Did he in 1949 or 1950 build those buildings? This building?

A. No, I don't think so, Mr. Foreman. I think this building where I saw him last was a new building built in either 1952 or 1953. I think it was 1953.

Q. Do you know when he bought the land it is built on?

A. No, I do not know. I didn't see the deed.

Q. Did this same W. M. Benson likewise build a 10 or 12-unit apartment building in Alice?

A. No, sir, I didn't see the contract.

Q. Well, do you know whether he owns one?

A. No, I don't know that he owns one.

Q. Mr. Heras, did he or not develop an oil lease, drilling some 15 or 20 wells, W. M. Benson, during those years 1949, 1950 and 1951?

A. No, sir, I don't know that he developed any leases.

Q. Sir?

A. I don't know.

The Court: Gentlemen, the Court will recess until 1:45.

11-2615 AFTERNOON SESSION—
JUNE 11, 1957

The Court: Be seated, please. You may continue.

11-2615 DIEGO HERAS,

being the witness who was on the stand at the time Court recessed for lunch, resumed the stand at this time, and continued his testimony as follows:

11-2615 CROSS EXAMINATION
(CONTINUED)

Q. (By Mr. Foreman) Mr. Heras, do you know a Ramon Perez?

A. No, I can't think right now of a Ramon Perez.

Q. Do you know a Roman Perez instead of Ramon?

A. No, I don't believe I do.

Q. If there were such a person in Benavides or San Diego,

you having lived there all your life, would know him, would you not, sir?

A. I believe so.

Q. And particularly if he had been an employee of the BISD and you had made out paychecks to him, you would know him, wouldn't you?

A. Yes, sir.

Q. Would you look at this deposit slip for April 13, 1949, please, sir? Here they are.

A. What was the date, Mr. Foreman?

Q. April 13, 1949.

A. I have a photostat copy of a deposit slip dated April 13, 1949.

Q. Does it show on that day in your account to your credit in the San Diego State Bank you deposited check No. 25212?

A. That is what is listed here.

Q. Will you let me have the copy of the annual report for the year ending August 31, 1949, please, sir? Thank you.

Now, will you turn to Page 62 of that report, please?

A. Yes, sir.

Q. Will you find the same check, 25212, that was deposited to your account on April 13, 1949?

A. This is Page 62, and what is the number of that check?

Q. 25212.

A. This is Page 62 all right.

Q. It may be a typographical error as to the page number, but let's try to find 25212 now. Let's see if that is the year ending 1949? It is bound to be, isn't it?

A. Yes, sir.

Q. 25212.

(Witness searching through document.)

Q. There is 211, there is 213.

A. Here it is.

Q. Okay. It is on Page 77 instead of Page 62, isn't it?

A. Yes, sir.

Q. And let me get a pencil and correct my information sheet here. If I read correctly, check 25212 was issued 4-8-49 to Roman Perez for carpentry work and was cashed April 14, 1949, and was for $45, wasn't it?

A. Yes, sir.

Q. Can you account for how that check got in your bank account?

A. It is possible that Mr. Perez might have cashed a check there at the office.

Q. It is?

A. Yes.

Q. If there is a Mr. Perez?

A. I don't know whether there is a Mr. Perez or not, but apparently it is his check and all I can say is it is possible I may have cashed this check for him.

Q. If there is such a person?

A. Yes, sir.

Q. If there isn't such a person, it could be a mistake on your part, couldn't it?

A. No, I don't think it was a fictitious name. I just don't know the man. I don't recall knowing him, still I may know him like I know many people. I know them when I see them, but we used to accommodate some of the people there at the office after banking hours when they had a check and I would cash the check, cash it for them.

Q. Cash it out of your own funds or out of the school funds?

A. Out of my own funds. Out of my money.

Q. Sometimes cash them up in the several hundred dollars, didn't you?

A. No, I didn't keep much cash in my cash box.

Q. Sir?

A. By $45, I mean—I believe that was just a check I cashed for somebody and just put it in with my—to replace my money.

Q. Do you know anyone, any man, woman or child in Duval County, that ever heard of Ramon or Roman Perez?

A. I don't know. I couldn't say there is now.

Q. Could he have been a figment of anyone's imagination, like 17-A through P?

A. I don't know.

Q. Sir?

A. I don't think so. I don't remember that particular instance, but I do believe it is one of those checks that I used to cash for the people there at my office.

Q. Well, now, are you related in any way to Jesus T. Garcia?

A. No.

Q. Do you know him?

A. I don't know. I may know him. I know two or three Jesus Garcias.

Q. Which ones do you know and where do they live?

A. One of them lives in Benavides and the other lives in Concepcion, 15 miles away from Benavides, in the little town of Concepcion.

Q. What does he do for a living?

A. I don't know. I think he is a farmer.

Q. Did you ever have any business dealings or transactions with him?

A. I don't know. I may have.

Q. Who is Jesus Garcia that lives in Concepcion, the one you are talking about?

A. I know one Jesus Garcia lives there, but I don't know whether it is Jesus T. Garcia or not.

Q. All right. We will settle for Jesus Garcia. Concepcion is a little town of about 150 people?

A. Yes, sir, it is.

Q. And anyone who knows this Jesus Garcia you think you know about lived at Concepcion—

A. I didn't hear that question.

Q. How long has he lived in Concepcion?

A. I believe he has lived there all his life.

Q. And how old is he?

A. He is over 50 years old, I know.

Q. Over 50, lived there all of his life, and he is married to somebody?

A. I don't know whether he is married or not.

Q. And he is a farmer?

A. To the best of my knowledge, he is a farmer.

Q. Does he live in the little village of Concepcion?

A. I wouldn't say in the same little village. He may be living on a farm outside of Concepcion.

Q. He may be? Does he?

A. I don't know.

Q. Where is his farm?

A. I don't know. It is somewhere around Concepcion, Texas, but I don't know which direction. It is in that general direction, that general area.

Q. And what sort of looking man is he, how tall is he, how much does he weigh?

A. I wouldn't guess. He is about five feet eleven.

Q. Is he portly or slender?

A. Slender, yes.

Q. Very slender and very dark for a Latin, or light?

A. Very light.

Q. He has blue eyes?

A. Yes.

Q. Red hair?

A. I don't know about the hair.

Q. Doesn't he have a harelip and a gold tooth?

A. I don't recall.

Q. But you are certain there is such a person?

A. I know that his name is Jesus Garcia, but I don't know whether he is Jesus T. Garcia, or not.

Q. That is one of the Jesus Garcias you know. I think you know some others, didn't you say? Two or three?

A. Yes, I know another Jesus Garcia, but he lives in a little farm about a mile and a half east of Benavides.

Q. A mile and a half east. That would be towards—

A. San Diego, Texas.

Q. Towards San Diego, on the highway, the regular highway?

A. Yes. It is off the highway about a quarter of a mile.

Q. To the right?

A. Yes, going out of Benavides.

Q. Is he related to the other Jesus Garcia?

A. I don't think so.

Q. Who is Jesus Garcia's nearest neighbor that somebody else besides you might know?

A. I don't know. He lives out on a little farm about a mile and a half east of Benavides, but I don't know whose farm or ranches are nearby.

Q. He is on an RFD route, or does he get his mail in Benavides?

A. I believe he gets his mail in Benavides, Texas.

Q. At the post office?

A. Yes.

Q. How long has he lived there?

A. Well, I believe he lived there all his life.

Q. How old is he?

A. Oh, I would say he is around 46 or 47 years old.

Q. Do you know whom he married?

A. Yes. I don't know the name of his wife.

Q. You know he is married but you don't know who he married?

A. He is married, and I know the wife, but I don't know what her name is.

Q. He has children?

A. I believe he has a little girl.

Q. How old?

A. I don't know. Fifteen or 16 years old.

Q. What does he do for a living?

A. Well, he tends the farm. His father had two farms, and they got some production of oil too.

Q. Oil production?

A. Yes.

Q. What is his father's name?

A. Jesus Garcia Ancira.

Q. Well, now, is this man known as Jesus Ancira or Jesus Garcia?

A. Jesus Garcia.

Q. Where does the Ancira—explain that to us so we will understand the use of the word. His father's name is Jesus Garcia Ancira and his name is Jesus Garcia.

A. It is a common practice in Spanish to adopt or carry the name of the mother at the last.

Q. At the last?

A. Yes, sir.

Q. You mean at the end of your life?

A. The end of the name.

Q. And—go ahead.

A. For example, Mr. D. C. Chapa, and he carries his mother's surname with him as his name and his children are all Carrillo. The same thing applies to Jesus Garcia Ancira, but their children are named or they go by or do business in the Garcia name.

Q. Did either of these, Jesus Garcia Ancira or his son Jesus Garcia, ever do any work for the Benavides Independent School District?

A. I don't know. They might have.

Q. Did you ever cash any checks for them?

A. I don't recall.

Q. Did you ever write any checks for them?

A. I may have.

Q. Will you look at your deposit on May 24, 1950?

A. Yes, sir.

Q. Give me the annual report ending August 31, 1950, please. I hand you the annual report for the—by the way on that—do you have it with you there? Does it show that on that day you deposited a check No. 27542 in your personal bank account at the San Diego State Bank?

A. Yes, sir.

Q. Will you look at—I hope it is Page 58. That is what I have written down here. Do you have Page 58?

A. Yes, sir.

Q. Will you find check 27542?

A. It is not here. Here we are. It is on Page 78.

Q. All right, sir. Seven instead of a five.

See if I read that correctly: Check dated 5-19-50, No.

27542, payable to Jesus T. Garcia for labor, date paid 6-1-50 for $26. Do I read that correctly?

Q. Can you account for how that check got into your personal account, Mr. Heras?

A. Yes. It is one of these items that I cashed for these people. It was because they got their checks after two o'clock, after banking hours, and I had small cash there and able to cash the checks, and I did that, their checks. I would cash the checks, and of course I would deposit and replenish my cash.

Q. You cashed it right out of the cash in your pocket?

A. No, I had a little steel box there where I carried a little amount of money.

Q. Was that the BISD petty cash fund?

A. No, that was my own personal account fund.

Q. Describe that little steel box as to size and where you kept it, as to color and any other identifying marks, please, Mr. Heras.

A. It is one of those steel cash boxes—

Q. Pardon me, was this spelled s-t-e-e-l?

A. Yes, sir, steel.

Q. Excuse me. Go ahead.

A. It was—I don't know what color. It is called sort of a gunmetal gray, put it that way.

Q. Yes, sir.

A. With a lock and—

Q. Did the lock have a combination, or was it a lock built into the box, or a hasp and a padlock?

A. One of those built-in locks, and where I kept a little cash. I kept my personal cash there and also had the American Red Cross business papers and documents in there.

Q. The American Red Cross?

A. Yes, sir.

Q. You weren't stealing from them too, were you?

A. No, I was not stealing from them.

Q. Then the box was about how many inches across and up and down and deep, wide and so forth?

A. Well, it is a rectangular box about four or five inches wide and three or four inches high, and about, I would say, fourteen inches long.

Q. Fourteen inches from side to side?

A. Yes, sir.

Q. All right. I see. All right. It took that big a box to hold your money in 1949 and 1950, didn't it?

A. I didn't keep much cash in that little box.

Q. Sir?

A. I didn't keep no big amount of money in that little box.

Q. Did you keep your big bills in your pocket?

A. No, sir.

Q. Then this steel box was 14 inches across, seven inches deep, and how many inches high?

A. I would say four inches high and about the same length across, wide.

Q. All right, sir. Wide? Do you mean front to back?

A. Yes, sir.

Q. Then it was about the size of a safety deposit box?

A. I don't know. I think a safety deposit box is longer than that.

Q. And that was kept in your Chippendale?

A. Yes, sir.

Q. And what exactly was that Chippendale? Was it a flattop desk or a rolltop desk? What type desk was it?

A. I don't remember exactly, but—

Q. Go ahead.

A. It was more or less an executive type desk with a glass top.

Q. Would you tell us whether it was about 60 inches across, from side to side, and about 35 inches from front to back?

A. Yes, approximately, about 36 inches across and about, say, six feet across.

Q. Six feet across?

A. Yes, about the size of this table. It was the size of this table (indicating).

Q. It was a flattop desk?

A. Yes, sir.

Q. And it had drawers on either side?

A. Drawers on the right and drawers on the left side.

Q. Did it have a drawer in front between the two stacks of drawers?

A. Yes, it had a middle drawer.

Q. Where in that Chippendale desk did you keep this gray steel box?

A. I kept that steel box in my lower righthand side drawer.

Q. Did you keep that desk drawer locked, or all of the drawers of your desk locked, or what was your practice with reference to that?

A. My practice was to keep that desk locked when I was not in there.

Q. Then you were the only person that had access to it?

A. Yes, sir.

Q. You had a key, you carried a key to your Chippendale desk?

A. Yes, sir.

Q. When you locked the center drawer, did it automatically lock all the drawers?

A. Yes, I believe it locked like that.

Q. You know it did, don't you, Mr. Heras?

A. I don't recall, but I think it was designed on the

same principles of all desks where you lock the middle drawer and automatically all the side drawers lock themselves.

Q. All right. Then it was—was that the only such gray steel box that you had in the Chippendale desk?

A. Yes.

Q. You also had a key to the box itself, in addition to the key to the drawer?

Q. And from time to time, such people as assisted you, cashed checks there, would cash them through you out of that box?

A. Not necessarily. If it was during the day, it was cashed from the School District funds we had there in Mr. Benson's office, but the small amounts, $15 or $20 checks, you know, that anyone would have and wanting to cash them, I would accommodate those people by changing—cashing the checks.

Q. The School District petty cash fund, you say, was kept in Mr. William Benson's desk?

A. No, it was kept in a big safe in the general office.

Q. Was it in a steel box also?

A. It was in a steel drawer.

Q. Of the safe?

A. Yes, sir.

Q. Who had the key to it?

A. Mr. Benson.

Q. You didn't have?

A. No, I didn't have a key to it.

Q. Ocie McCoy didn't have?

A. I believe she had a key, yes.

Q. Then she would have to handle the petty cash for anything with the School District that was paid out of the School District funds?

A. She did, yes.

Q. And she would do that by unlocking a compartment within the safe kept in Mr. Benson's office?

A. Yes, sir.

Q. And your explanation of No. 27542, if you have one, is that you must have cashed this $26 check for Jesus T. Garcia out of your $15 or $20, or smaller funds, in this gray steel box?

A. Yes.

Q. Then, of course, if you had a maximum of $15 in there, you beat him out of $11, and if you had a maximum of $20, you beat him out of $6?

Mr. Wilkey: The attorney is distorting what the witness testified to. The witness did not say he kept only $15 in the box. He said he cashed checks of $15 or $20 in amount, and he is distorting that and ridiculing the witness. We object to it as being uncalled for and a distortion of the record.

The Court: What says the defense?

Mr. Foreman: I didn't intend to do so. I will withdraw the question, if it will help the matter.

The Court: Very well.

Q. (By Mr. Foreman) Mr. Heras, what did you consistently carry, as to amount, in this gray steel box?

A. It varied. Sometimes I would have $50, $60, but not too much over $60.

Q. How and why, having another and different and petty cash fund for the School District, did you carry your own petty cash fund in this steel box?

A. It was not the school. It was the own personal money I carried there.

Q. Was there any particular reason for your doing so, Mr. Heras?

A. The only reason I kept that was as a safe deposit box for money that I had.

Q. But you did carry this large amount of currency in your pocket notwishstand you had this box?

A. No, I didn't carry too much in my pocket.

Q. Mr. Heras, would you look at March 10, 1950? See if you had a deposit of $125. I believe it is that expense account check I asked you about yesterday.

A. What date was it?

Q. March 10, 1950.

A. Yes, sir.

Q. And you did, on that day, deposit a check labeled on your deposit slip in your handwriting "Expense check," didn't you?

A. Yes, sir.

Q. And you undertook to account for that saying you had some additional and unusual expenses the first quarter, did you not, sir?

A. Yes, sir.

Q. Those, of course, were personal expenses, such as hotel bills and so forth, what have you?

A. Not personal expenses. Amounts like $125 was given to me when I had to make long trips either to San Antone or Austin, Texas, where the amount would probably exceed more than $75.

Q. Can you find anywhere in that report of a check issued on March 10, 1950 to Diego Heras?

A. On this annual report?

Q. Yes, sir.

A. What was the date?

Q. March 10 was the date of the deposit. I think you

will find the check I am asking about issued on March 8, but you find out if anywhere in that area you find a check issued to you?

A. I don't see any checks made out.

Q. Let's see if you find there voucher 27076 dated March 8, 1950 and paid March 11, 1950?

A. Yes, sir, that is the same check.

Q. That is the same check you deposited, isn't it?

A. Yes, sir. I don't know whether it is the same check because the deposit slip does not list the check number, and some of this office expense check was given to the superintendent. The only similarity between these is just amounts.

Q. Let's see if I correctly read it. It was issued 3-8-50, No. 27076, and it is payable to office expense fund and it was issued for rent, utilities and supplies, and it was paid 3-11-50 and it was for $125. Isn't that true?

A. Yes, sir, it is.

Q. Can you account for how that check got into your account at the San Diego State Bank?

A. It was paid March 11, Mr. Foreman, March 11, 1950.

Q. Yes.

A. But the deposit on that day—

Q. March 10 is the date of the deposit, sir.

A. It is not necessarily the same check.

Q. Will you point out any other expense check in the month of March, 1950 for $125, payable to anybody?

A. No, I don't see on that day any other check made for $125.

Q. On that day? I said that month. Is there any in March? Is that a $125 check payable to anybody for expenses except to office expense fund for rent, utilities and supplies?

A. I would have to look all through the month of March. No, I don't see any other check for $125.

Q. Then in your best judgment, would you say that check payable to office expense fund for $125, deposited March 10, and cleared through the bank on the 11th is the check issued on March 8, 1950 as 27076?

A. I don't know what ties it in because it doesn't show the check number here, just expense. Most of those expense checks were made out to me.

Q. Was this one made out to you?

A. No, sir, it was not made out to me.

Q. Whom was that made out to?

A. Office expense fund.

Q. And who made it?

A. I don't know whether I made it or not. I don't have the check here. It could have been I could have made it and still somebody else in the office could have.

Q. As a matter of custom and practice, as the writing of checks was carried on at that time, you customarily would have written it as maker?

A. I would have customarily made the check.

Q. You would have countersigned it at that time?

A. On March 5 — either Mr. Benson or Miss McCoy.

Q. And who would endorse such a check, office expense fund, rent, utilities and supplies?

A. I don't recall, Mr. Foreman. We had an office expense check that we would give the superintendent of schools for his office expense, and I don't know how they were endorsed.

Q. Well, was the check made out as payee, pay to the order of office expense fund, rent, utilities and supplies?

A. Yes, sir.

Q. Well, if you deposited that check in your account, you would have endorsed it, wouldn't you?

A. I would have endorsed it, yes.

Q. Is there any practice or process with which you were familiar that could legitimately account for that check getting into your personal bank account in the San Diego State Bank on March 10, 1950?

A. No. I don't know of any.

Q. Do you think that perhaps was just—by the way, you say the superintendent of schools would be the one normally to get that check?

A. He would get some checks in the name of office expense checks for paying all rent and utilities.

Q. Paying all rent where? What rent? Did you all own your school building?

A. Yes, sir.

Q. Didn't you own your tax office?

A. Yes, sir. We—but rent was paid not only for school offices or rooms, they paid rent on some machinery too.

Q. Machinery?

A. Yes.

Q. Oh, rent. They rented equipment to be used—

A. Equipment for the school, yes.

Q. Then that check normally, whenever it was written, would have gone to Mr. R. W. Milligan?

A. Yes, sometimes it went to him.

Q. But if this went into your account, it went to you?

A. Yes, sir. I may have cashed the check, but still—

Q. Pardon me. You may have done what, sir?

A. I may have cashed the check for Mr. Milligan.

Q. I see. Then that would have been cashed out of that $50 kitty, that $125 check, or would you have to go down into your hip pocket for that?

A. I don't know. I can't tell much by the deposit slip. I advanced that theory about cashing the check, you know,

just my thinking, but it could easily have been my own personal expense check.

Q. It could have been that Mr. Milligan—you wrote it, endorsed it and deposited it after your friend William Marvin Benson countersigned it, couldn't it have been?

A. I don't know, Mr. Foreman.

Q. Now, Mr. Heras, would you look at your deposit for August 24, 1949, for a check in the amount of $150?

A. Yes, sir.

Q. Now, will you look at the annual report for 1949 for the month of August, and try to find if there is there any check issued to you for that amount, $150, in the month of August of 1949?

A. I don't see any checks issued on that date to me.

Q. You mean in the month of August, you don't find any check issued to you, to Diego Heras, in the month of August in the amount of $150?

A. No, sir.

Q. Turn please, sir, to Page 179, to voucher 27437.

A. What was that number again?

Q. 27437.

A. The 27000 series is not on Page 79—did you say 79?

Q. I said that, but I could be wrong. I have been wrong before on these page numbers. Every one of them has been wrong as page numbers, but the check number if 27437.

A. I don't believe—

Q. If it will help you, it is this office petty cash fund, office supplies, rent, utilities, paid May 27. Wait, I am wrong on that. August 24. I am sorry. 27437 issued April 26, 1950, but not paid until August 30, issued April 26.

A. 1950. It will probably take the other. This end: August 31, 1949.

Q. This was paid August 30. It would be in the '50's.

A. Yes.

Q. Look at Page 79 on that.

A. 274—

Q. —37. It is 438—I may have my dates all balled up there.

Mr. Wilkey: May I see what the date of the check, the date it was made out, you are looking for?

Mr. Foreman: It shows to have been made out April 26, 1950.

Mr. Wilkey: April 26?

Mr. Foreman: There is bound to be a typographical error here because it shows to have been paid August 30, 1949, deposited on August 24, 1949. It is this August 24 deposit and paid August 30. The date in error must be April 26, 1950. That must be a mistake of the stenographer, but August 24, 1949 is the deposit and paid August 30, 1949. It says it was issued April 26, 1950 and it couldn't have been issued a year after it was paid.

A. Mr. Foreman, this deposit slip here shows April 24—

Q. August 24.

A. $225. Well, do you mean—

Q. Was there any other—have you got a $150 check?

A. This is August 17.

Q. That is the mistake. I am sorry. You have one made in here around August, to office petty cash fund. That is actually 1950. It should be at the tail end of this photostat copy, shouldn't it?

A. Yes.

Q. May we borrow the 1949 year? Here is 1949, August 17, 1949 was the deposit.

Mr. Wilkey: Do I understand you are looking for a check that was deposited in San Diego on the 17th and paid at the Texas State Bank on the 30th of August? Is that it?

A. Yes, sir.

Mr. Wilkey: A 13-day transfer?

Mr. Foreman: Yes, sir, Correct. Exactly.

Did you ever keep any checks after issuing them, in that gray steel box before you deposited them?

A. Yes, sir, sometimes I would keep them there three and four days.

Q. Sometimes as long as 12 or 13 days?

A. Perhaps.

Mr. Wilkey: My question of you, Mr. Foreman, was about the 13 day transfer after it was deposited in the bank, from 17 to 30. I think you may have misunderstood me.

Mr. Foreman: Actually it shows here to have been issued a year after it was deposited also, so I don't know what the proper date is. I am quite sure we are confused on this item and trying to verify them. I can't blame him. I can't blame him if he can't find it from the leads I have given him.

Mr. Wilkey: I object to the relevancy, a check issued on the 17th and another check on the 30th. I don't think it took 13 days to travel ten miles from a bank in Alice to a bank in San Diego.

Mr. Foreman: May it please the Court, the witness has stated he kept checks 13 days in the box and he verified there was not check issued to him in August of 1949 for the amount of this check deposited. I won't take much longer, because the waste of time is my fault.

The Court: You may interrogate the witness about it. What will be developed, I don't know. It may not be explained to the satisfaction of anyone, but I will permit him to—

Mr. Wilkey: Your Honor, I submit for the second time, Mr. Foreman has deliberately referred to the 13-day interval as being after he may have put it in the box, and my question each time was in regard to the transfer, after it was shown to be deposited on the 17th in the San Diego bank. I think Mr. Foreman is misstating what he was asking about.

Mr. Foreman: I will admit I was confused.

The Court: You gentlemen are arguing this case prematurely. Let's proceed with the evidence and at the conclusion of the evidence, ample time will be allowed for each side to present their arguments.

Q. (By Mr. Foreman) Mr. Heras, this will be the last of this series. Do you have 1949?

All right. On May 19, 1949, will you tell us whether or not you deposited the check in the amount of $250 to your private account in the San Diego State Bank?

A. What was the date again, please?

Q. May 19.

A. 1949?

Q. Right.

A. Check, $250.

Q. And that was not labeled salary check, was it?

A. No, it is not labeled salary check.

Q. While you are looking for check No. 23395 issued May 7, 1949, will you also search and see if any other check except your salary check was issued to you in the month of May, 1949 for $250? Do you want me to hold this for you so you can look for both at once?

A. I don't seem to find any on May—dated May 19.

Q. May 19 is a deposit but it was issued May 7, 1949, 25395.

A. May 7?

Q. That is 393.

A. That is a May 7 check.

Q. I will look for them at the recess. Mr. Heras, where were those loose voucher checks that you wrote in behalf or on account of the Benavides Independent School District kept at the San Diego offices in the Parr Building?

A. They were kept in a concrete vault in that office.

Q. And where was the concrete vault? Not—in which one of the rooms?

A. It was in the general office on the east wall of the general office.

Q. The south office, the office that extended across the entire depth of the building?

A. I beg your pardon. It was not the east, it was the north wall of the general office.

Q. The north wall of the general office?

A. Yes.

Q. By the general office, it was at the south end of the Parr Building?

A. Yes.

Q. Do we have a diagram? I believe we do. (Indicating.) Will you draw that in here, please, sir?

A. (Witness complying with counsel's request.)

Q. Good. And where was the door?

A. (Indicating.) The door was right here.

Q. Well, let's see—I think the door—yes. It is how big in feet, square or rectangular, that vault?

A. The inside dimensions, I believe, were about six feet wide and about fifteen feet deep.

Q. And would it have—how high was it?

A. Oh, I would say around seven or eight feet.

Q. What was it made of?

A. Concrete.

Q. Any steel?

A. A steel door, yes, sir. A combination steel door.

Q. A steel door that worked with a combination?

A. Yes.

Q. Who had the combination?

A. We all knew the combination to that vault door in the office. Pardon me, in the general office.

Q. That would have been Mr. Benson, Miss McCoy, yourself, Blondy Barrera, Domingo Gonzales, Mrs. Maria Estella Garcia—

A. No, I don't think she worked there long enough to open the vault, but I don't know—I do know that Domingo and Miss McCoy and Mr. Benson, Blondy, and—

Q. That is A. V. Barrera?

A. Oh, no,—they all know the combination to that vault door.

Q. And during the office hours, the vault was kept open, the door, or was it kept locked?

A. It was customarily locked at five o'clock

Q. Was it a time lock?

A. No, sir.

Q. And how many shelves, or were there shelves in this 6 by 15-foot vault?

A. It had shelves on the west side of the vault, on the wall of the vault, and shelves on the rear wall.

Q. Then you guess the height at about ten feet?

A. Approximately about eight feet.

Q. Eight feet. Then, were the shelves solid from the ground, from the floor to the eight feet?

A. Yes, sir.

Q. And the entire 15-foot depth, and then across the remaining six feet, the north end?

A. Yes, sir.

Q. What were kept on those shelves?

A. We kept all the books of the School Districts and the City of San Diego and the City of Benavides, and several other books in that vault.

Q. What else besides the books?

A. Supplies.

Q. Including blank checks?

A. Including blank checks.

Q. Including blank checks of the BISD?

A. Yes, sir.

Q. And all of the people you mentioned, as well as other employees who did not have the combination, had access to and from time to time did in the course of their employment go into that vault?

A. Yes, sir.

Q. And they were frequently there, each of them, alone when no one else was there, were they not?

A. Well, yes, sometimes.

Q. I mean in the vault alone. I don't mean when anyone else was in the office, but a person to get into the vault, a stenographer to get carbon paper, paper clips, or any other office supplies, would from time to time go in there, is that not true?

A. Yes, sir.

Q. Were the files also kept in there, that is, correspondence files, or were they kept elsewhere?

A. No, the correspondence files were kept in the office space.

Q. Now, where, with reference to the shelves and the walls you have described, were the blank vouchers kept?

A. The School District, the Benavides School District check blanks were kept in a vault.

Q. Were they kept on a shelf?

A. No, we kept the blank checks on a shelf—the blanks—they wouldn't be opened, the packages, I'll put it that way, of blank checks were kept on the shelf but the blanks we were using we always kept in a drawer.

Q. Where?

A. In a vault.

Q. A drawer of what?

A. A wooden drawer.

Q. Was the wooden drawer in a desk or built in a drawer?

A. It was a built-in drawer beneath a shelf.

Q. Which shelf, the lowest, the middle shelf?

A. The middle shelf.

Q. Were there more than one such built in drawer? Such drawer for City of Benavides and people whose books were likewise kept there?

A. Yes, there was about twelve drawers, built-in drawers.

Q. Go ahead, please.

A. The size of about two feet wide and about two or three inches high and there were about five or six, perhaps more, drawers where we kept the blank checks.

Q. Five or six more drawers?

A. Yes.

Q. Besides the one you have just described?

A. Yes.

Q. And were the blank checks in the boxes that had not been opened kept in those other drawers?

A. No, sir, they were kept in the shelf.

Q. Just open on the shelf?

A. Yes.

Q. Were they marked outside so as to identify what they were?

A. Yes, they were. Each bundle was clearly marked.

Q. And showed the series, the numbering?

A. Yes, sir.

Q. As a matter of fact, those numbers were put on the checks at the time they were printed by the same company who printed the checks, were they not?

A. Yes, sir.

Q. And no renumbering of any kind was practiced at the office of the School District, were they?

A. No, sir.

Q. And you started with the first of that numbered series back in what year?

A. I don't recall, Mr. Foreman, but I think we started with 1000. I am not sure, but we kept the series connected each year, you see.

Q. In one year, you would add onto the year before and continue over from 1000 to 27000 or 29000, whatever it showed?

A. We would buy a three or four-year supply of check

blanks, and they were all numbered numerically, and I don't believe we changed the series during those years.

Q. During any of the years you worked there, did you?

A. I don't think the series was broken.

Q. Didn't you start in 1938 and continue at least until 1952?

A. Insofar as back as 1938, I don't recall what series of number we had on the check.

Q. You say you had a four-year supply or a five- year supply?

A. A two, three or four-year supply.

Q. You would buy several thousand series in advance?

A. Yes.

Q. How many of those vouchers to a package did each package contain?

A. I don't remember exactly whether a hundred or two hundred.

Q. And there would be both the original and a duplicate, with one-time carbon on the back of the original?

A. Yes, sir.

Q. Then the packages would be about 8 by 10 inches or 6 by 10 inches?

A. Approximately—no, it would be more or less about the size of a standard letterhead.

Q. Standard letterhead?

A. Yes.

Q. About 8-1/2 by—

A. Eleven, more or less.

Q. And about how thick in inches?

A. I think that it was about two or three inches thick.

Q. And stacked in there in the order in which they were numbered?

A. Yes, sir.

Q. And as of the 12th of July, 1951, for however—how many unopened packages of these voucher blanks, check blanks of the BISD, were there on the shelf in the vault? That is—the 12th being the day they were moved back, the books of Benavides.

A. I don't believe I could estimate the amount of blank checks we had in the office at that time.

Q. You say that there were 20, 50 or 100 such checks?

A. I don't know, Mr. Foreman. I really don't know. I think we had a good supply, but as to the number of unopened packages, I don't know. I don't remember.

Q. Do you know when those packages got to the BISD whether or not they were still consecutive or whether or not there were some packages missing?

A. I really don't remember. I don't—I think they followed the same consecutive order, Mr. Foreman, but I am not sure. The best I can recall is that the series was about the same.

Q. Well, you said that you didn't have anything to do with moving them, didn't you?

A. Yes, sir.

Q. Is that still your testimony?

A. Yes. I didn't—I was not there when they moved the books and supplies from one office to the other.

Q. You did not help a man named Oliveira move them?

A. No, sir.

Q. You did not show him what to move or where to get them?

A. No. I was not there that day when—at that time they moved the books and supplies.

Q. Where were you that day?

A. I was out of town.

Q. Where?

A. I don't recall whether it was Corpus or some other town.

Q. And how long had you been gone?

A. I don't know. I believe I was there that morning, but I took off and the records of the School District were moved, I think, later in the day.

Q. No one was there to move them while you were there?

A. No, sir.

Q. You took off for Corpus, and you don't know how long you were gone before you came back?

A. I believe I was gone all that day.

Q. And then you came back that night or the next day?

A. Yes, I came back that same day, that night, and I learned about the moving the next day.

Q. You didn't know the supplies and materials and the books were to be moved that day until you came back and found they had been moved?

A. No, I believe Mr. Benson told me that they were moving the office records that day.

Q. That is why you took off?

A. No, sir. During that period, during that time in 1951, I was consulting a doctor in Corpus Christi.

Q. You went to see a doctor?

A. Yes, sir, I went there every 15 days or every month.

Q. Who was he?

A. I believe he was a Dr. Jensen.

Q. J-e-n-s-e-n?

A. Yes.

Q. And that was the reason you were—took off on the 12th?

A. Yes, I think—I am sure that I had gone to Corpus for needed treatment.

Q. And the next day, Diego, you reported for work at Benavides?

A. No, I don't believe I went back to work that same day.

Q. I said the next day?

A. I believe I stayed away from the office about, oh, a week or ten days.

Q. You were mad, weren't you?

A. Yes, sir.

Q. Mad at D. C. Chapa, weren't you?

A. Yes, I was mad. Yes, sir.

Q. Mad at Oscar Carrillo, weren't you?

A. Yes, sir.

Q. Mad at George Parr, weren't you?

A. Yes, sir.

Q. And you didn't come back to work until Mr. Chapa came and told you nobody else knew anything about those books in that office, and they were so far behind they had to have you, isn't that true?

A. Yes. After a week or ten days leave, I was told to go back to work, that they needed me to write the tax roll and do other chores in the office, and I went on back to work.

Q. But you didn't intend to, on that 12th—the morning of the 12th when you went to Corpus Christi, you didn't intend at that time to ever go back to work for the BISD, did you?

A. I don't recall what my decision was or my attitude, but I do admit I was mad.

Q. As a matter of fact, you had been bitterly resentful and had been outspoken in that bitter resentment of D. C. Chapa and Oscar Carrillo for many weeks and months

from the time the discussion of moving the books back to Benavides took place until and long after they were moved, weren't you?

A. No, I don't believe I felt that way once I was restored or taken back.

Q. Did you feel that way up until the time that Mr. Chapa came and told you nobody else knew anything about the office routine, the bookkeeping, the banking, the tax rolls? Up to that time and for months before, months before your books were moved, did you have that bitter rancor and resentment towards Carrillo and Chapa?

A. No. I did not consider nothing had happened then —that is, I didn't have any reason to be mad six months or three months before the books were moved away. This thing happening on that day was what made me mad.

Q. It was just the fact that one day you were in the angry mood you hadn't been in before then?

A. I hadn't been exactly mad at anybody then—before then.

Q. You didn't express to William Marvin Benson any antipathy or hatred or resentment of D. C. Chapa or Oscar Carrillo prior to July 12, 1951?

A. I don't recall that I ever expressed any distress of them.

Q. Any distress?

A. Any anger. We had talked to Mr. Parr before—weeks or months before the moving of the records and supplies to Benavides, and he had assured me that I would remain in San Diego, and that is what I wanted.

Q. Well, you did not express to Mr. W. M. Benson the fact that you did not want to work at Benavides where you would be under the supervision of Oscar Carrillo?

A. I might have said it. I might have told Mr. Benson about my attitude toward making a move like that, but not exactly bitter.

Q. Well, did you tell him you didn't like Oscar Carrillo and Oscar Carrillo didn't like you, and you all couldn't get along and you couldn't work at Benavides under Oscar Carrillo?

A. I don't recall.

Q. You may have done so?

A. I may have.

Q. What was your attitude, regardless of whether your expressed it, as to feeling you could work in harmony with Oscar Carrillo at Benavides or not?

A. I just felt like that during that time.

Q. During what time?

A. During 1951.

Q. All of the six months preceding the move?

A. Well, I do not know how long before, but I did talk to Mr. Parr about the move, but I don't know whether it was three or four or five months.

Q. I am coming back to the point in just a minute, but while we are on the issue of the checks, I want to ask you if you ever numbered the checks or inventoried the checks by number or by packages after you got to—back to Benavides, so as to determine whether or not some of the packages or checks were missing?

A. No, sir, I did not inventory the checks.

Q. But you do not say to this jury that all of the checks, the blank checks of the BISD, were actually moved from San Diego to Benavides, do you?

A. Well, I can't say because I was not there when the records were moved, and I don't have any way of knowing.

Q. You don't know whether William Marvin Benson extracted an indeterminate number of packages of those checks or not, do you?

A. No, I don't know.

Q. Well, as a matter of fact, if you, Diego Heras, had wanted to do so, you could have anticipated down through the months and years to come and laid in a stock of those checks yourself, couldn't you?

A. No, I don't believe so.

Q. Did you do it, Mr. Heras?

A. No, sir, I did not.

Q. But if you had done so, intending to continue to forge checks of the BISD, you would tell this jury honestly and forthrightly and frankly of that act on your part, would you not?

A. I never took any blank checks with me and I didn't anticipate falsifying any checks or any other maneuver as to getting away with any blanks or supplies of the School District.

Q. But if you had done so, you would tell us about it, wouldn't you?

A. Yes, sir, I believe I would.

Q. And if you had written checks on down into 1952 and 1953, you would tell us that, wouldn't you?

A. I didn't make any checks for 1951, the latter part of 1951 or 1952 or 1953. I didn't have any access to the checks. Someone else had the access to those checks.

Q. But you had had access to checks printed and packages that would have fitted into almost any month in 1952, 1953 or 1954, didn't you, Mr. Heras?

A. I didn't get that question.

Q. You had access up to the time and on the morning

of the 12th of July when you went by the office and before you went to Corpus, knowing or intending to quit, you had the opportunity at that time and the day before and for all the days before the moving was being directed, to have laid in a stock or supply of blank Benavides checks for any number of years or months in advance that you might so desire, didn't you?

A. No, sir.

Q. What was there to keep you from doing so?

A. I couldn't have done it.

Q. Wouldn't all you need to have done would be pick up the packages and rearrange the other packages on the shelves in the vault?

A. No, I don't believe it could have been done without noticing.

Q. Without who noticing?

A. Anyone that wrote checks or kept the sequence.

The Court: Mr. Foreman, what is the purpose of questioning him about what he could have done?

Mr. Foreman: May it please the Court, from his other testimony and acts, I assume the jury might assume if he could have done it, he did do it. The jury might not believe, based on the credibility of the witness at this stage—

The Court: Is that supposed to go all through this case, what somebody could have done?

Mr. Foreman: No, there were certain checks written after he says he quit writing checks, and I am attempting to show he would at least have had the material with which

to have written such checks after the period he claims to have stopped writing them on July 12, 1951. I am really through with the point.

Mr. Wilkey: Your Honor, we think it is irrelevant and time consuming, and on the basis of the other evidence, the authorized signatures were Parr, Carrillo, and Saenz and he can pick up a package of blank checks on the counter in any bank.

The Court: Mr. Foreman says he has abandoned it. It is now 3:15, and the Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Q. (By Mr. Foreman) Mr. Heras, I now hand you the last two sheets of this series of San Diego State Bank deposits commencing, I believe, January 5, 1952, and you have a deposit of F. Gonzales for $4, do you not, sir?

A. Yes, sir.

Q. And on January 15, 1952, a note for $400, less interest, making $393.50, the one I asked you about this morning?

A. Yes.

Q. And on February 15, 1952, you have currency, $3,203.96, less note and—what is that other thing—note and cash of $700?

A. Yes.

Q. In other words, you paid off this note and got some cash from it, $3,203.96?

A. I don't remember.

Q. It shows a balance down here of $2,503.96.

A. Yes, sir, but I don't remember this other.

Q. Well, if you take the $700 it says, less note and cash, from $3,203.96, you would get $2,503.96, wouldn't you?

A. That is right.

Q. Will you tell us where this large bundle of currency came from, $3,203.96?

A. No, sir. I don't know. I don't remember.

Q. Is that just something you were casually carrying around in your pocket?

A. There has always been some doubt about this special account which I don't know who opened in my account, in my name. At one time, we discussed, Mr. Chapa and myself, about some people whose notes I had countersigned, co-signed, and he said, "Well, we will either borrow some money from the bank and pay them off," but I don't recall. I mentioned to him about doing something about those people I had signed notes with, but I really don't know whether I borrowed the money or who opened this account here.

Q. Is it your testimony you don't know anything about a deposit to your account of $3,203.96 on February 15, 1952?

A. I didn't know about this until last 1954, I think.

Q. Late 1954? Well, do you know who would be interested in paying off your note up here for $392.50 by a gratuitous gift of over $3000 to you?

A. I don't know that this note here is the same note as this one here.

Q. Did you owe any other note to the San Diego State Bank except this note at the time this deposit on February 15, 1952 to your account of $3,203.96 was made?

A. I don't know that I had any other note with the bank. I maybe had. I don't know.

Q. Diego, isn't that $3,203.96 the proceeds of taxpayers' checks payable to the order of the BISD for and as taxes which you cashed through Jose Cadena at the Merchants and Exchange Bank and deposited at the San Diego Bank?

A. No, sir, I don't know anything about this.

Q. Didn't you check out every dime of the $3,203.96 with checks signed by Diego Heras?

A. I don't believe so. I did have a Diego Heras special account, but it never had too much in it, not $3200, and still it does not make sense. It is listed as currency and then less cash.

Q. Well, did you get any cash when you opened that account for $3,203.96?

A. No, sir.

Q. Isn't the $3203.96, the reason that it is that amount, because it was just exactly the checks totaled that amount?

A. No.

Q. Sir?

A. No, sir, I don't know.

Q. You don't know?

A. No, sir.

Q. Then you don't know whether that is money obtained either by Homero Gutierrez from Jose Cadena for your account or not, do you?

A. I never made any dealings with any of them as to giving money, proceeds of checks. I never carried any checks of the School District to be cashed and money given me by either Homero or Jose Cadena.

Q. You were in possession of all your mental faculties in February of 1952, weren't you, Mr. Heras?

A. Yes, sir.

Q. And did you have any—you say you do not know whether you checked that out of the Diego Heras special account or not?

A. I didn't check any amounts like that out of that account.

Q. But you did have all your canceled checks, don't you?

A. No, I do not have my canceled checks. They were either destroyed or mislaid when the office was moved, but I don't remember anything about this money here.

Q. Mr. Heras, did you move that Chippendale down to the BISD office, or did you move that desk you referred to as the Chippendale, the executive-type desk, from San Diego, or did you move it to the Heras Building, or where did you move it?

A. I don't think the desk was removed from the office.

Q. You think it was left at the San Diego offices?

A. I believe so.

Q. Then when do you claim that the Chippendale was broken into by somebody that you wanted to tell us was George Parr but Sam Burris wouldn't let you?

A. What was the question again?

Q. When you claim your desk at the BISD offices in the Parr Building at San Diego was rifled, broken into, what year or what month of what year?

A. It was immediately before moving the office. It was about July, either the 10th or 11th.

Q. Then where—your canceled checks withdrawing funds of $3,203.96 from the Diego Heras special account would not have disappeared at that time, would they?

A. Well, I don't know. They took out all supplies and

letters, and what have you, that I had in my desk there and I didn't see my bank statements after that.

Q. This account had not even been opened then because that move occurred July 12, 1951, and this account, the Diego Heras special account, was not opened until February 15, 1952, at least eight months later, isn't that true?

A. Yes, sir, that is true.

Q. Well, then, tell us where your checks are withdrawing funds from the Diego Heras special account?

A. I don't have those checks. I don't think I have any checks—I had any checks from this Diego Heras special account. I did have a special account, but I never had too much money in it.

Q. How did you get your money out of it, such money as you did have in it? Did you go up and say, "Hand it to me," or write checks on it?

A. I didn't write checks for that amount.

Q. For any amount? Suppose it was $75 to $100 to $150. How would that money get out of the Diego Heras special account, by check?

A. I don't know. I didn't have anything to do with this account.

Q. Mr. Heras, regardless of this account, just answer my question, please, sir. How did—you had a Diego Heras special account?

A. Yes.

Q. And you had it with the San Diego State Bank?

A. Yes, sir.

Q. And in response to a subpoena, the San Diego State Bank produced the duplicate copies and the originals of your deposit slips, didn't they?

A. Yes.

Q. Was there any different way of getting money out

of it, whatever money you had in it, out of that than there is out of the normal bank account? Didn't you write checks on it?

A. I didn't operate a special account in 1952 with that big amount. I didn't know anything about this. I do believe that if it was opened, it was opened in error then checked out of there because I never had that much money in cash.

Q. You mean the error was yours in showing that much cash at one time, or the bank just gratuitously opening an account without your putting any money in it and paid off all your notes you owed and handed you some cash the day they did it? Which was the error?

A. I don't know. I have a faint recollection about discussing with Mr. Chapa the opening of an account in San Diego, Texas. I recall that, and I told him that I couldn't open an account in San Diego State Bank because it was not the regular school depository, but it was later learned that he opened an account there in his name, but I believe it was first installed in my name.

Q. You think that this is the petty cash account of the Diego Heras—that this Diego Heras special opened February 15, 1952, was really Mr. Chapa's account?

A. It was either that or either in my name, but I know I didn't put that much money in cash. I think I borrowed some money in March, but I don't know anything about this.

Q. Isn't it true that the D. C. Chapa tax collector account at the San Diego State Bank was opened way back yonder in 1951, and not in D. C. Chapa's name at all, but in the name of the BISD tax collector account, petty cash, by D. C. Chapa, tax collector?

A. I don't know. This is the first time I saw this exhibit.

Q. Now that you have seen it, and I refer to Government's Exhibit 74, you do see that the account was opened December 13, 1951, don't you?

A. Yes, sir.

Q. Is that the one you recall having told Mr. Chapa you couldn't open?

A. Yes, it could possibly be. I don't know whether it was this account or not but we did discuss about using other than the Texas State Bank for a depository.

Q. In that connection, Mr. Heras, isn't it true that the offices of the San Diego State Bank objected to cashing questionable checks of taxpayers, insolvent taxpayers, and having them bounce back without an account to charge them immediately on such checks being returned? Isn't that the reason that it was decided to open the BISD tax collector's account, petty cash, at San Diego?

Mr. Bottler: That is duplicitous, and a compound question.

A. I don't recall. I don't know that it was opened for any such purpose.

Q. Well, did you discuss with Mr. Chapa or did he discuss with you that such was——the bank had complained about having tax payment checks that were cleared so as to get the cash for the Texas State Bank at Alice, checks that they did not want to deposit directly in the bank at Alice, because of the questionable nature of the check as to whether it would clear or not?

A. No, I don't believe I ever discussed anything like that. I do say again that it was discussed about using other than the Texas State Bank for a depository.

Q. And wasn't the same thing discussed with reference to the account opened at the Merchants Exchange Bank, that they likewise objected to having taxpayers' checks

cleared through their bank before depositing the cash in the Texas State Bank at Alice without having an account there of the School District to charge back any such checks that failed to clear?

A. No, I never hear anybody opening an account for that purpose.

Q. Well, it is true that Mr. Chapa was frequently hard to find, would be gone sometimes for days at a time, is it not, Mr. Heras, and therefore there would be some question about redeeming a check that had bounced after clearing through the Merchants Exchange Bank if Mr. Chapa could not be found, is it not?

A. No, I don't think so. I don't know that any such agreement or scheme was used or discussed or accepted or installed. This is the first time I saw anything like that.

Q. The first time you ever saw how the account was carried, BISD tax collector's account, petty cash, by D. C. Chapa, tax collector, Box 44, Benavides, Texas?

A. I never seen that before.

Q. You do see a balance of $9,014.47?

A. Yes, sir.

Q. That is Government's Exhibit 74 in this case?

A. Yes.

Q. Now that we know about this account, does that disabuse your mind as to the possibility that the Diego Heras special was the one that you discussed with Mr. Chapa?

A. No, I don't know whether it is the same one or not. About the early part of 1952, I recalled we discussed putting the money in other banks other than the Texas State Bank. I know he had either opened or had an account in the Texas State Bank. I never saw the checks or the account.

Q. Was that discussion perhaps, "Since you and Benson have more of the School District's money than the School District, we might as well start putting the money in your account originally to keep you from stealing?"

A. No, sir.

Q. What were your relations, from the time you went back to Benavides in July of 1951 until you left? Were you free or unfree with D. C. Chapa, or was there any change in your personal attitude toward him as being free or otherwise?

A. I would say we were free. After I went back to work in the office in Benavides, I don't think that the feeling was the same after I had a disagreement with Mr. Parr.

Q. Was it a strained, distant, gradually widening rift between you and Mr. Chapa, you and Mr. Parr, you and Oscar Carrillo, the entire time from the time you went back in July of 1951 until you left finally in December of 1952, wasn't there?

A. No, I don't believe so. We worked in the same office there, and I know my attitude was not hostile toward them as it was—as it had been before.

Q. When had it been hostile? That is, your attitude toward Chapa and Carrillo and Parr?

A. It was most hostile about the middle of July, 1951.

Q. Mr. Heras, I took those deposit slips so as to get your mind off of that unexplained $3200 currency deposit February 15, 1952. Let's forget it so as to get an answer to my question about how you got funds out of and how you expended funds on deposit in the San Diego State Bank in he Diego Heras special account you acknowledge having there. Did you write checks on that account?

A. Yes, I did. The account was small amounts that I had there.

Q. Well, such small amounts as there were, actually $3200 was a small amount to you in 1948 and 1949, wasn't it?

A. No, it ws a big amount.

Q. Didn't you say $2500 that you claimed you gave D. C. Chapa was just a small amount? Didn't you say that the other day, and so classify it?

A. Yes, compared to other amounts I carried with me back and forth.

Q. Whatever the amount in the Diego Heras special account, did you write checks on it?

A. I don't believe I did. I know I didn't. In 1952, I drew nothing against that account.

Q. Please forget the size of the account. Let's think of it as you think of it, as a little old dinky account of not more than $3000, or one or three hundred dollars. Tell us did you write checks on the Diego Heras special accounts? Did you write checks on it?

A. I used to write checks up until 1950 or 1951, but it was negative.

Q. Was that on the Diego Heras special?

A. Yes.

Q. Good. And did you get statements on the Diego Heras special returning your monthly statement and your canceled checks or not?

A. Yes, I did. The special account I carried there was mostly connected with the American Red Cross, and the last year or so it was almost negative, and I believe it was closed out. The only thing I remember was that I did borrow some money and I think I put that in the Diego Heras special account, but that big amount, I don't know.

Q. Didn't you borrow money on January 15, 1952, $400? Isn't that the only note that you borrowed in 1952?

I will get your liability ledger sheet if you want it.

A. This note—

Q. Where is your January 15?

A. January 15, $400 even.

Q. All right. Is this January 16, $400?

A. Yes, it probably is.

Q. Here it is right here. $400, January 16, 1952, indebtedness $400. Now, you made, you borrowed some—$95 more, a demand note on March 8, 1952, on you, Diego Heras, isn't that right?

A. $495.

Q. Yes, and then reduced it from time to time?

A. Yes.

Q. Now, each of these is a renewal of that, isn't it?

A. Yes, a renewal.

Q. You renewed it May 2, 1952, you renewed it January 3, 1953, and you renewed it May 3, 1953?

Mr. Wilkey: What was that date he bororwed $95?

Mr. Foreman: It shows March 8, 1952, note No. 7492.

Mr. Wilkey: This Diego Heras special account is 1952—

Mr. Foreman: This has nothing to do with the Diego Heras special account. This is the liability account.

Mr. Wilkey: This is the one with the $3000 deposit.

Mr. Foreman: February 15, 1952.

This note you are talking about you borrowed, and the only note you borrowed in 1952, was $400 except the $95 additional on March 8?

A. That is what has been posted.

Q. You don't see any note for $3,203.96, do you?

A. No, sir, I don't. I didn't borrow that much money even.

Q. You know this currency was not the proceeds of a note to this bank, don't you?

A. No, sir.

Q. You don't know it?

A. I do know it.

Q. Would you like to see your liability ledger sheet for the Texas State Bank so as to make sure you didn't borrow it there too?

A. I didn't borrow any great amount as $3000. I didn't borrow anything in 1952.

Q. You didn't owe the Texas State Bank anything after you paid off the $1500 note on April 14, 1951. That is the last transaction you had with them, isn't it?

A. Yes, it looks like it.

Q. The only other transaction you had with them was a $600 note borrowed back there in 1949, renewed until you paid it off May 16, 1950, isn't that right?

A. Yes.

Q. Then this item that is still unexplained—can you understand why, if in truth D. C. Chapa had anything to do with that deposit, he would have selected you of all people to turn the money over to?

A. I do recall I had told him of several notes that were signed by me with other people, and he said we will get around to those and we will get them all together and clear them. My best estimate was that I had about $800 or $900 in notes that I had signed with and I just wanted to clear my name and I just imagine that the money was either borrowed, or somehow put in there, but I do know

if the money was borrowed, it wasn't borrowed in my name.

Q. Let me see if I follow you. Since you had signed eight or nine hundred dollars in notes, you figured Mr. Chapa maneuvered and manipulated to give you $3200 that you didn't know anything about in consideration of the eight or nine hundred dollar notes you had signed and the rest was to be a sort of lagniappe?

A. The indebtedness was made by people borrowing money with me signing them, but that is the only connection I can see with this deposit here.

Q. You say you wanted to save your good name?

A. I would say I wanted to clear my name or renew this note in somebody else's name.

Q. Wouldn't it have been simpler if Mr. Chapa, and much cheaper and more reasonable as far as expenditure of money was concerned, for Mr. Chapa to have gone and paid off those notes, $800 or $900 in notes, in cash and picked up the notes rather than impose on you by clouding your good name with all of these illgotten gains?

A. I don't know, Mr. Foreman. During that time, I would say I would okay anything he wanted to do. In this case here, I don't know whether he actually put the money or not in there, but one thing I know, I didn't put that money in there. I didn't know anything about this special account until the last two years.

Q. You opened it and it was active in 1950 and 1951, and you didn't know anything about until 1955 or '56 or '57?

A. I didn't know anything about this.

Q. You mean you didn't realize you had been stupid enough to expose yourself by depositing that much cash?

You didn't even know about photostat copies of deposit slips and microfilm records in 1952, did you?

A. I did know about photostat copies made and the microfilm and other devices the bank used to record their transactions, but I had no knowledge of this until the last year or so.

Q. You mean—

The Court: Mr. Foreman, the reporter is having difficulty hearing this witness because the witness is required to face in the other direction. If you will take your seat at the counsel table, then he will face in your direction.

Q. (By Mr. Foreman) Mr. Heras, isn't it true that due to the lapse of time between February 15, 1952 and the time you were first called upon, about 1955, to explain this $3,203.96, you had forgotten what you did with the money and therefore you chose to deny you ever had such money?

A. I didn't get any statement from the bank. I didn't know about the account until 1954 or '55 when photostat copies were made.

Q. You mean if you had known about it, you had clear forgotten it?

A. I would have known of the account.

Q. Well, is it your testimony that you didn't check that money out?

A. I didn't check it out. I don't know how it was checked out. Where is the money. I don't know. I never did see the checks. I didn't write any checks against the account. Checks were not given to me.

Q. Well, have you gone down there to see whether or not you still have it?

A. No, I think it was closed out. I learned about that, but I couldn't get any records, checks, or anything else connected with the account.

Q. I am confused, please, Mr. Heras. You say you think it was closed out, the account, the Diego Heras special account, the $3200?

A. Yes. I believe I have seen photostat copies of money taken out of the fund.

Q. Of the checks that withdrew it?

A. Not the copies of the checks, but numbers indicating the withdrawals. I don't—I am not sure about that, but anyway I do know I didn't know anything about that account until late 1954.

Q. But if you had your Diego Heras special monthly statements, it would have every canceled check written on that account, wouldn't it?

A. Yes, sir.

Q. Where are they?

A. I don't know.

Q. When did you last see them?

A. I never saw them. I never saw the checks.

Q. Sir?

A. I never saw the checks. I never wrote checks for that amount.

Q. I mean forgetting the amount. Where are such checks as you did write, canceled checks that were returned to you on the Diego Heras special account?

A. I never did get the checks back. I didn't write the checks and consequently I never did get the checks back.

Q. Mr. Heras, here is your deposit of the note for $495 on March 8, 1952, isn't it?

A. Yes.

Q. Now, on March 18, 1952, you dug down in the kitty and came up with some more cash currency, 14—

A. $1,487.11.

Q. $1,487.11. That was currency too, wasn't it?

A. It reads here "currency."

Q. And what did you—where did that come from?

A. I don't know. It is the same account. The same account. It was just more money put in.

Mr. Wilkey: What is the amount of that currency on March 18?

A. Mr. Wilkey, it reads currency, $1,487.11, and then underneath reads "Less cash $200," even.

Mr. Wilkey: What is the date of that $95 note?

A. I don't have a $95 note.

Mr. Wilkey: I am really asking Mr. Foreman here. I didn't get the—

Mr. Foreman: March 8.

Mr. Wlkey: Both 1952?

Mr. Foreman: Here is the March 8 1952 note.

Mr. Wilkey: Thank you.

Mr. Foreman: Here is the other item.

Mr. Wilkey: Thank you.

Q. (By Mr. Foreman) Was there anybody else, besides D. C. Chapa that loved you enough to go around swelling your bank account with pennies from Heaven?

A. I don't know. It was not given to me. I never knew anything about those big amounts. In fact, I didn't know about any of these special accounts for big amounts until 1954.

Q. I see.

A. That is the best explanation I can give because I don't know who did it. I didn't go to the bank to deposit that money.

Q. Now—

A. The only connection I see, that I know, is when I told Mr. Chapa about those different people that had me sign notes with, that I wanted to clear my name on those notes, and he said that he had some notes with his name as co-signer and if I would get them all together—I don't know, but that is the only connection I can see.

Q. Oh, I see. The difference in the $800 and $900 worth of notes you were on and which you wanted to clear your name would have been represented by notes Mr. Chapa was on, is that correct?

A. Mr. Foreman, he was co-signer with many notes and I was co-signer with other employees on some notes, and there were some employees who had accounts at the bank—not accounts, but were not co-signed by anybody, but still they were employees of the School District there and before then, I would get checks out payable to the bank and/or payable to myself, and get the notes. Now, I don't know—that is the only thing I have—that I can see where the connection is, but still I don't know. I really don't know whether they were paid or not.

Q. Mr. Heras, if they were paid, you didn't write the checks to pay them, did you?

A. No, sir, I didn't write the checks to pay them. It was sometimes customary to run the note as a check.

Q. To run the note as a check?

A. Yes, sir.

Q. Well, then, would you have returned to you $3200 and $1400 worth of—a total of about $4500 worth of notes? Were they sent back to you?

A. No, sir, they were not.

Q. Have you any other accounts, either in Monterrey, Mexico, Mexico City, or Nuevo Laredo, or a safety deposit box, Mr. Heras?

A. No, sir.

Q. Where benefactors have, without your knowledge, established credit or made deposits or stored currency for you?

A. No, sir, I don't.

Q. Have you been to those cities, and if so when was the last time?

A. I haven't been to Monterrey since 1952.

Q. And Nuevo Laredo?

A. I haven't been to Laredo in four years. I was—the last time I was in Nuevo Laredo was 1952.

Q. Was that just before you went into the mental hospital at Galveston?

A. I don't know when it was. It was in the early part of 1953, I think about April.

Q. And you went there with a diagnosis of manic depressive psychosis, did you not, sir?

A. I don't know what the classification of my illness was.

Q. Well, who was Dr. Dunlap, your doctor?

A. Dr. Dunlap and Dr. Gonzales.

Q. Dr. Gonzales being at Benavides?

A. Yes.

Q. What about your Nuevo Laredo doctor?

A. He lived in Laredo.

Q. Who did, Dr. Gonzales of Benavides?

A. No, Dr. Arturo Gonzales.

Q. Is Dr. Arturo Gonzales a different Dr. Gonzales from the Benavides Dr. Gonzales?

A. Yes.

Q. Dr. Gonzales at Benavides is Dr. J. G. Gonzales?

A. J. C.

Q. Then are they related in any way?

A. No, I don't think so.

Q. Dr. Arturo Gonzales in Nuevo Laredo specializes in mental illnesses, doesn't he?

A. No, I don't think so. I think he is a general practitioner.

Q. Well, did you not go to him, and go to Laredo, or Laredo Estados Unidos so as to take mental treatments from Dr. Gonzales, Arturo Gonzales?

A. No, sir.

Q. When did you go to Laredo, Webb County, Texas, to see Dr. Arturo Gonzales?

A. That is around the latter part of April, 1953.

Q. Was that after you got out of the mental hospital in Galveston?

A. I don't think the St. Mary's Infirmary is a mental hospital, Mr. Foreman.

Q. All right. After you got out from under the care and treatment of Dr. John G. Otto. Do you think he is a psychiatrist?

A. I don't know.

Q. Well, was he your doctor?

A. I don't recall. I went—I came originally to Dr. Titus Harris in Galveston, and I was examined by four or five different doctors.

Q. Well—

Mr. Wilkey: I don't believe the witness finished the answer.

Q. Have you got some more to that answer? Have you got some more answer you have to deliver when asked that question?

A. Well, I came to Galveston in April to Dr. Titus

Harris, and I don't know what—whether he is a psychiatrist or not. I was examined by a score of doctors.

Q. I didn't intend to make you repeat it, but Mr. Wilkey seemed to think you were supposed to say something more when I asked the question about going to Dr. Harris. Is there anything you have prepared in your answer that you have not now delivered?

Mr. Wilkey: I object to the statement of counsel to my thinking there is something more he is preparing to say, the interpretation, because I could see the witness with his mouth open to say something else. What it is, I don't know.

The Court: The objection is sustained, and the jury is instructed not to consider the remarks.

Q. (By Mr. Foreman) Mr. Heras, have you been rehearsed what you are supposed to say about the trip to Galveston?

A. No.

Q. Do you know why Mr. Wilkey would assume you had not finished your answer?

A. No, sir.

Q. You actually repeated all you had already said, and that was the only thing you did repeat, was it not, sir?

A. I wanted to add a little more to the trip to Galveston, Texas, but I thought it wouldn't be necessary, or perhaps it is, but I was restricting my answer to yes or no if possible.

Q. You were—go ahead, sir.

A. If you want me to, I can say what I wanted to say.

Q. Unless it is necessary to explain the question as to who was your doctor, I would rather you would limit

your answer to my questions, and Mr. Wilkey will take over there with anything I fail to develop about the trip to Galveston.

Did you or not take a letter from Dr. Dunlap to Dr. Titus Harris reciting you were his, Dr. Dunlap's patient, you had been his patient, and had been treated by another doctor in Alice—

Mr. Wilkey: Your Honor, I anticipate some hearsay here and I don't want any recitation of hearsay under the guise of a question. My information is that the witness actually doesn't know the contents of the letter, and I don't want Mr. Foreman to recite the contents of a letter which we haven't had the opportunity to examine before hand and without calling the person who wrote it or received it, so I object in advance to this on the grounds of hearsay, having heard him recite it before.

Mr. Foreman: I object to the prosecuting attorney coaching the witness to state he hasn't seen the letter. The witness has sworn under oath about this letter before, and I am laying a predicate to impeach him, and I think I can establish the witness knows what is in the letter but this witness—

Mr. Wilkey: He did not before, so I want to object in advance.

The Court: May I have the question?

The Official Reporter (Reading): "Question: Did you or not take a letter from Dr. Dunlap to Dr. Titus Harris reciting you were his, Dr. Dunlap's patient, you had been his patient, and had been treated by another doctor in Alice—"

The Court: I think first you should establish whether he took a letter.

Mr. Foreman: All right, sir. May I do so now?

The Court: The objection is sustained, and you may continue now.

Q. (By Mr. Foreman) Did you or not take a letter from Dr. Titus Harris to Dr. Dunlap?

A. Yes, I took an envelope. I didn't know what was in it.

Q. Do you now know?

A. No. I have not seen the letter.

Q. You were not shown that letter on May 11, 1955, when you were under oath?

A. I was shown a letter that was written by Dr. Phillip Joseph of Alice, Texas.

Q. All right. Was that the letter you took to Dr. Titus Harris?

A. I couldn't tell. I don't know whether the letter I took to Galveston was written by Dr. Joseph or Dr. Dunlap.

Q. As a matter of fact, you did not take the letter yourself, but it was taken by those who accompanied you, your wife, your father, and your nurse?

A. I think I took the letter. I handed the letter to the registrar at the clinic or hospital.

Q. Did you read that letter on March 11, 1955 when you were under oath?

A. I was shown a carbon copy of a letter made by Dr. Joseph and addressed to Dr.—I believe Dr. Titus Harris.

Q. And did that letter state—

Mr. Wilkey: Just a minute. I am objecting to the contents of the letter until either the doctor who wrote it or the doctor who received it is called because the witness has testified he doesn't know the contents. We start out with a question from Dr. Dunlap to Galveston. Now, we are on a letter from Dr. Joseph to Galveston. I don't know whether there is one or two letters, but before Mr. Foreman testifies, I would like the person who wrote the letter or received the letter in person, himself.

Mr. Foreman: I would like to ask about his testimony on March 11, 1955 about that letter, laying a predicate for impeachment.

The Court: You may answer.

Q. (By Mr. Foreman) Did or not that letter state—

The Court: Now, you say "Did or not that letter state." He has stated he did not know what it stated. You stated you wanted permission to ask him about his testimony at some other date, and your question doesn't purport to cover testimony at some other date. You state immediately "Did or not the letter state."

Mr. Forman: I will rephrase.

Mr. Heras, did you testify on March 11, 1955 that Dr. Joseph had characterized your mental state as manic depressive psychosis?

A. I didn't—I don't know that he did. I read the letter that was made by him, in Court on March 11, 1956 or 1955, and I don't remember the phraseology of the letter.

Q. Well, do you remember testify about manic depressive psychosis on March 11, 1955 in the county courtroom in Duval County, at San Diego, Texas?

A. I don't remeember.

Q. Do you remember even anything about the trip from Laredo to Galveston, or Benavides to Galveston?

A. Yes, a little.

Q. Well—

A. I was in deep pain most of the time, and I had a registered nurse with me all the way from Benavides to Galveston, Texas.

Q. Where had you been just before being in Benavides? Had you been in any other city or under any other physician just before leaving Benavides?

A. Yes, I had been under treatment of Dr. Gonzales and Dr. Joseph—Dr. Dunlap.

Q. Where?

A. In San Diego, Texas.

Q. For how long?

A. I don't know exactly how long before I was brought to Galveston.

Q. Was it weeks or months?

A. Well, Dr. Dunlap has been my physician for many years.

Q. Well, how long had you been under observation prior to going to Galveston in April of 1953?

Mr. Wilkey: We object to the word "observation." The

witness testified he was under treatment by those doctors. That is the witness' word.

Mr. Foreman: I would like for the witness to testify if he was under observation, rather than have Mr. Wilkey coach him not to answer that question. The witness alone will know whether he was under observation.

The Court: Your question is how long had he been under observation. It has not been developed he was under observation.

Q. (By Mr. Foreman) Were you under observation prior to April, 1951—1953, I mean, of any physicians, and if so which?

A. Mr. Foreman, I had been under treatment for spasm—stomach spasms, convulsions, and about observation, I take it you mean that they were observing me for any mental cases, mental illness?

Q. Exactly.

A. No, I don't think so.

Q. Mr. Heras, did you or not in late 1952 and in 1953, commence playing with little children in the second grade, and only associating with them?

A. No, sir.

Q. At the school grounds at recess?

A. No, sir.

Q. And before and during school?

A. No, sir.

Q. Did you or not go out into the woods alone, and crouch down and sit there for hours with no one around you?

A. No, sir.

Q. Late into the night, by the side of the road?

Mr. Wilkey: How would Mr. Foreman know that to ask the question with no one around him?

The Court: Mr. Foreman doesn't know it. He is asking it of the witness.

Mr. Wilkey: Then he must have concocted it out of the sky.

The Court: It is a proper question on cross examination. I will allow it.

Mr. Foreman: I object to the District Attorney interrupting and arguing.

The Court: Objection sustained, and the jury is instructed not to consider the remarks of counsel.

Q. (By Mr. Foreman) Did you or not habitually take a sweet-smelling drug which left you in a narcotic state or in a state of tension, making your eyes glazed, and setting your face and features, did you or not, during the years 1952 and the first part of 1953? Is that true or not?

A. No, sir, it is not.

Q. Did you or not go to the—leave your family, and children, and wife many hours late at night, going to the offices of the BISD, and playing a record player and smoking cigarettes, just listening to music there where you worked in the daytime, throughout the year 1952, in the fall and winter of 1952, long hours into the night?

A. No, sir. I would go to the office during the night to make telephone calls, and it was either local calls or long distance calls that I had to wait for the answer, and it was, I would say, normal procedure. Mr. Chapa would do the same thing, and all the employees make phone calls, and I would make them sometimes during office hours and at night.

Q. Is your testimony that you did not go there and sit for hours at a time and alone listening to phonograph records?

A. No, sir. We had a phonograph there, but I didn't play it.

Q. Did you or not hide different drugs and different bottles of whiskey at different places, including in the light fixtures and in the back of the safe and in the vault and at various places over the premises of the BISD throughout 1952 and the fall and winter of 1952?

A. No, sir. I never carried any drugs of any kind other than what was prescribed for me by the doctor. Now, as to those whiskey bottles, I don't know that I had them with me. There were whiskey bottles in the office. Whose bottles they were, I wouldn't know.

Q. You do admit they were there?

A. They were in all the offices.

Q. And were they hid at most irregular places?

A. In the tax collector's office, the whiskey bottle was always in a drawer and I saw several whiskey bottles in the office, but they weren't mine.

Q. Mr. Heras, I am only asking you as to what you did do or not at various different places, wherever you worked, hide little partly-used bottles of whiskey?

A. No, sir.

Q. What were your drinking habits in 1952, the fall and winter? First we will go back to San Diego. What were your drinking habits with reference to drinking during office hours, daytime, from 1948, 1949, 1950 and until July 12 of 1951?

A. The drinking I did during those years, I did after five o'clock.

Q. I see.

A. I think I am safe in saying I was there from eight o'clock in the morning until five o'clock in the evening.

Q. Where?

A. At the office.

Q. Every week-working day?

A. Most every day during the week.

Q. Then it is your testimony that you did not take days off, get drunk, and not go to work at all?

A. I did ask for leave of a day or two when I had to go somewhere.

Q. When you had to go where?

The Court: Mr. Foreman, do drinking habits apply to credibility, bias, or what?

Mr. Foreman: All of these, Your Honor, including very peculiar habits, I shall tie him to the—I think if I ask a few more questions, the Court will get it. What I am asking about, I want to prove about certain places he cashed BISD—

The Court: How would drinking habits relate to credibility?

Mr. Foreman: It has been so held.

The Court: I have known some honorable men who did drink.

Mr. Foreman: I know it, Your Honor, and there are some of note that are not honorable who likewise drink.

The Court: And I have known some dishonorable men who did not drink.

Mr. Foreman: I agree with you. So have I, Your Honor, but here we have one who drinks, Your Honor.

Mr. Heras, do you know where El Ranchito is?

A. Yes, I know where it was. I don't know whether it is still there or not.

Q. When was it where you know it was?

A. It was in the—I would say the northwest portion of the little town of San Diego, Texas.

Q. And operated by Carlos Barrera and Tommy Barrera and Wayne Barrera?

A. I don't know who the boss was, but I imagine Tommy was running the place.

Q. And did you not usually and frequently go there at 1:30 in the afternton, as soon as it opened, and stay until evening on weekdays many times during the years 1949, 1950 and until July of 1951?

A. I don't think it was during midday that I went there. I do recall going to that place after five o'clock. I would go there sometimes to look for county officials.

Q. You went there looking for county officials?

A. Yes, or if I had anything to ask or any business with the county judge or commissioners, I almost invariably would find one at that place.

Q. Frequently you took one of them there?

A. No, I don't believe I ever took a county commissioner or county official to El Ranchito.

Q. It is what is called a high-class bawdy house?

A. I don't know.

Q. They were noted for their very beautiful and elaborately gowned women, hostesses, who lived there on the premises, were they not?

A. Yes.

Q. Pardon me. Go ahead, sir.

A. I don't know how many they kept there on the premises, but I think—I don't know, 10 or 15.

Q. Ten or 15?

A. Yes.

Q. And they changed them about every two weeks as soon as all of the boys had met them, did they not, and brought in a new group?

A. I don't know what process they used.

Q. Was there any particular one you spent any extraordinarly large amounts of money with?

A. No, sir.

Q. You were about as generous with all as you were with one?

A. No, I was not generous with any of the hostesses.

Q. I see. Do you know where Diego Navajar's beer tavern was in San Diego up until you quit patronizing him on July 11, 1951?

A. Mr. Foreman: you mean the position, the—

Q. Yes, the location of it?

A. The location?

Q. Yes.

A. It is, I would say about the same general area of the El Ranchita, about two or three more blocks away,

three or four blocks away, but in the general direction of the northwest section of town off the Freer Highway.

Q. Yes, sir, and you were his principal patron, were you not, sir?

A. I don't believe so.

Q. Well, were you or not there frequently in the morning and afternoon on week working days drinking beer?

A. No, I was—I used to go there every other day, but I was not the principal patron in that tavern.

Q. By "principal patron," I mean, did you pay his rent?

A. No, sir, I did not.

Q. Did you give him money to pay his rent with from month to month as he paid his rent?

A. No, sir.

Q. And did you or not frequently have him open up after he had closed for the night so that you and guests of yours could have parties at his place?

A. No, sir, I don't believe I ever prevailed on him to open the place after office hours, or after hours.

Q. It really was more your office than the San Diego Benavides District office, was it not, Mr. Heras?

A. No, it was, in a way, headquarters for the county commissioners and other county officials.

Q. Did they gather there before sweeping down on El Ranchita?

A. They spent more time in this Navajar place than El Ranchita.

Q. Did anybody spend one-tenth as much time in Navajar's, except Navajar himself, as you spent there at the Navajar place?

A. I don't think I spent more than what the county officials spent there.

Q. Did you customarily advance money to Navajar to pay for his beer wholesale when it was delivered from wagons?

A. No, sir, I did not.

Q. What was your name? How were you referred to at—first, how did you refer to yourself at Navajar's place? Did you call yourself by an affectionate nickname such as "Daddy-O?"

A. No, sir.

Q. Were you or not referred to there as El Borracho?

A. No.

Q. What does El Borracho mean in Latin or Spanish?

Mr. Wilkey: That is immaterial if he wasn't referred to as that.

Mr. Foreman: He might not know until—I think I will be able to establish in San Diego it is El Borracho.

The Court: Objection sustained.

Q. (By Mr. Foreman) Do you recall whether or not the words "El Borracho" were also written in the men's room at Navajar's place?

A. No, sir. There was no such scrawling or such writings on the wall to that effect.

Q. You two wouldn't permit that, would you?

A. I don't know, but it was not written on the walls; or any place.

Mr. Wilkey: We think this is irrelevant, and counsel is bringing the case down to the level of writing on the walls of men's restrooms. We object to this inquiry.

The Court: I suggest it not be further pursued. The witness has said it wasn't so. I suggest you pass on to something else.

Q. (By Mr. Foreman) How far from Diego Navajar's place did Ninfa Palacios live?

A. I do not know how far. It could be three or four blocks, or more. I don't know. I don't remember.

Q. Could you watch her home from Diego Navajar's place?

A. I don't know whether it was visible from that place or not.

Q. Didn't you prefer Diego Navajar's place to El Ranchita because from there you could keep an eye on Ninfa Palacios?

A. No, sir.

Q. You never did go there to Diego Navajar's place to watch Ninfa Palacios' home?

A. No, sir.

Q. Were you ever at Ninfa Palacios' home?

A. I went by there many times. She was working with my co-worker in an appliance store, and I used to take her home, but that was all.

Q. I didn't ask you about anything else. You did take her home frequently, did you not, sir?

A. Not every day.

Q. Did anybody take her home any more often than you did?

A. I don't know. I think her employer took her more oftener than we did.

Q. And did you ever give Ninfa Palacios any money?

A. No, sir.

Q. Not even one red cent or dime?

A. No. I didn't give her any money. I bought some shaving creams and toothpaste from her. She also represented a company from up North and sold cosmetics and different kind of toiletries for men, and I don't know—I may have given her a check in payment, but wasn't anything too big.

Q. Was it a Benavides Independent School District check?

A. No.

Q. Isn't it true that those checks that you deposited made payable to Domingo Gonzales, the proceeds of those checks Domingo Gonzales cashed them for you, and you would give the money to Ninfa in Domingo's presence?

A. No, sir.

Q. You didn't do that on many occasions?

A. No, sir.

Q. And you did not pay Diego Navajar to watch, spy on, and report on Ninfa Palacios' comings and goings?

A. No, sir.

Q. Over how long a period, what time did you take her home from work and go by her home, as you have stated you have done many times?

A. I don't recall. Approximately two or three months.

Q. What months and what years?

A. I don't recall whether 1950 or 1951.

Q. Now, Mr. Heras, did you ever give Diego Navajar checks of the BISD, which you had in blank countersigned by W. M. Benson in the years 1949, 1950 and the first half of 1951, that you would fill out the payee's name, your name, turn over and endorse the back, and give Diego Navajar checks to take to the San Diego State Bank and get the money, and bring the money back to you?

A. No, sir.

Q. That just didn't happen?

A. That just didn't happen.

Q. Checks from 40 or 50 up to two or three hundred dollars?

A. No, sir.

Q. You didn't do that?

A. No, sir.

Q. And did you ever give Diego Navajar 40 or 50 dollars when he would bring you the proceeds from such a check you had filled out, signed, and endorsed in his presence and in his bar?

A. No, sir.

Q. That was not a practice of yours throughout the years 1949, 1950, and the first half of 1951?

A. No, sir. I never handed Navajar any checks from the School District for him to cash for me.

Q. Whether School District checks or not, did you ever send him to the bank in San Diego with such checks?

A. No, sir.

Q. If you had done so you would tell this jury that you did, wouldn't you?

A. Yes, sir.

Mr. Wilkey: I object to that type of questions as being speculative, calling for speculation if he had done something he did not do.

The Court: Objection sustained.

Q. (By Mr. Foreman) Mr. Heras, what is your relationship to H. Q. Heras?

A. He is my first cousin.
Q. Were not you and he raised—

The Court: Let me suggest that that question not be asked again. It has been asked and answered several times. Each time the witness has stated H. Q. Heras is his first cousin, and unless you think he is going to change his testimony, or unless you think he has testified untruthfully, I suggest we rest at that.

Mr. Foreman: I want to establish an even closer relation.

The Court: If you want to establish a closer relationship, do you think he is a brother?

Mr. Foreman: Yes, sir, and his partner and raised as his brother.

The Court: Oh, very well. If that is the object, you may continue, but that testimony is well in evidence that they were first cousins.

Mr. Foreman: I know that, Your Honor, and it is only as a preliminary question.

The Court: Very well.

Q. (By Mr. Foreman) Were you and he not raised from infancy by the same grandmother, she assuming the role as mother to both of you?
A. Yes, sir.
Q. And were you and he not partners immediately

upon your severing your connection with the BISD in December of 1932—I mean 1952?

A. The firm was named Heras & Heras, but actually he didn't have any connection with the work that I did in the office. It was not really an association. It was my idea of putting the name Heras & Heras, but actually he didn't have any connection with the company.

Q. But he was the Heras that you had reference to when you wrote up that name?

A. Yes.

Q. And he is the closest person living to you today except your wife and children, isn't he?

A. Yes.

Q. And he is the person who cashed those Exhibits 18, 19, 20 and 21, is he not?

A. Yes, that is his signature, however this one here—one of the checks is not endorsed by the City—usually it is a stamp, Mr. Wilkey?

Mr. Wilkey: You are referring to No. 21, Francisco Sanchez, the so-called Vaello Lumber Company?

Eighteen, 19 and 20. I should eliminate 21. He is the man whose name appears on the back of that check, isn't he?

A. Yes, sir.

Q. Now, you are—that is your signature, the maker of the check?

A. Yes, sir.

Q. Is there a Francisco Sanchez?

A. Yes.

Q. Who is he?

A. He used to work for the City of Benavides.

Q. Do you know his signature?

A. I don't know how he writes.

Q. Is that your signature?

A. No, sir.

Q. And is there a Francisco Carrillo?

A. Yes, sir.

Q. Is that his signature?

A. I don't know his signature.

Q. Did he ever work for the City of Benavides?

A. I don't know. He did work for the School District, but I don't know he worked for the City of Benavides.

Q. This is Espirideon, Speedy, Martinez, and he has been here and testified before this jury and at this trial?

A. I have seen him in the hall during this trial.

Q. You know that is not his signature, don't you?

A. I don't know. I am not familiar with his signature.

Q. Well, is it your signature?

A. No, sir.

Q. I mean by that—I know it isn't your signature, but is it your handwriting?

A. No, sir.

Q. Now, Mr. Heras, Mr. Martinez' check is $325, isn't it?

A. Yes.

Q. And the Francisco Carrillo is $130, isn't it?

A. Yes.

Q. And the Sanchez check is $124, isn't it?

A. Yes, sir.

The Court: Gentlemen, it is five o'clock and the jury is instructed—reminded of the instructions previously given.

Court will adjourn until 9:30 tomorrow morning.

12-2710 MORNING SESSION—JUNE 12, 1957

The Court: Be seated, please.

12-2710 DIEGO HERAS,

being the witness who was on the stand at the time Court recessed on June 11, 1957, resumed the stand at this time and continued his testimony as follows:

12-2710 CROSS EXAMINATION (CONTINUED)

Q. (By Mr. Foreman) Mr. Heras, directing your attention to the deposits in the Diego Heras special account of February 15, 1952, of $3,203.96, less note and cash, $700, $2,503.96; I hand you what purports to be an original deposit slip of that account, and ask you to describe it as to whether or not it is made on a typewriter or in handwriting.

A. It is made on a typewriter.

Q. And if it is typed out, "Diego Heras, Special"?

A. Yes, sir.

Q. Did you type that, sir?

A. No, sir, I did not.

Q. All of the other deposit slips, except this, have been in your handwriting, haven't they?

A. Most of them have been my own handwriting.

Q. This shows on the line of currency, $3,203.96, doesn't it?

A. Yes, sir.

Q. Now, Mr. Heras, do you know C. G. Palacios?

A. Yes, sir.

Q. He spells the name as Ninfa Palacios?

A. Yes, I believe they spell it the same way.

Q. What is your contact or friendship with C. G. Palacios?

A. I have known him all my life, and I don't say we are closely associated. I have dealt with him on bank transactions as notes.

Q. You are a good friend of his, aren't you?

A. I would say yes.

Q. He is a good friend of yours, isn't he?

A. I think so.

Q. And you all used to see each other at least once or twice a day while you were in San Diego, didn't you?

A. Yes.

Q. And Mr. Heras, see if this helps refresh your memory, actually that currency credited there is the same total of a bunch of taxpayers' checks to the BISD left at the bank in advance for collection to be deposited to your account when they had cleared whatever banks they were written on by the taxpayers, in payment of their taxes to the BISD, wasn't it?

A. No, I don't know. I don't know that it was handled that way. I don't know that the checks were cashed and put in. I really don't know. This is the first time I have seen the original of this deposit.

Q. Isn't it true, Mr. Heras, that the reason you did not fill out that slip in the beginning was because it was not known whether there would be a kick-back, that is, there would be some of these checks would be questioned because of the fact that they had not been deposited in the depository bank? Isn't that why, although the checks

were delivered before the 15th of February, the deposit slip was not actually filled out at the San Diego State Bank until February 15?

A. I don't know.

Q. And you don't know when those checks had all cleared, and therefore the amount was subject to being credited to your account, that the bank took out whatever was due on that other note?

A. No, sir, I don't know that that was the case.

Q. You don't know that it wasn't the case?

A. I don't know anything about this.

Q. Now, Mr. Heras, just a minute, didn't you, when you were notified that those checks had cleared—

Mr. Wilkey: Your Honor, I am going to object to this line of questioning on the ground of time and relevancy, because the witness has plainly testified he knows absolutely nothing about this deposit slip and this deposit, and these questions, repeated series of questions, about details is Mr. Foreman's method of advancing his own theory to the jury's minds as to why that wasn't made out in Mr. Heras handwriting, and typewritten. The witness has said more than once he knows nothing about the deposit. If he doesn't know anything about it, he doesn't know the details. We object on the ground of relevancy, and I think it is Mr. Foreman's testimony.

Mr. Foreman: May it please the Court, the witness is on cross examination, and some of the Government's theory of the case is checks cashed at this bank. It is our theory this man is the one who cashed many of the checks at this San Diego State Bank that were cashed, and of-

fered in evidence by the Government, and if we establish that he cashed and deposited and spent the proceeds of these checks in this time, and had the means of doing so at the time these other checks were cashed at that bank, then the jury would have a right to assume it was a practice starting at the time we are attempting to establish it now, and continuing, and thereby account for the ones the Government claims or insinuates or suggests some of the other defendants must have cashed, and as far as what this witness has testified, I submit he hasn't testified to what Mr. Wilkey says, and the objection is more in the nature of coaching the witness as to what Mr. Wilkey wants him to say. He has said he doesn't know whether that is true or not. He has not said he didn't know anything about them.

Mr. Wilkey: Your Honor, he just said so.

The Court: What is the date of the deposit?

Mr. Foreman: February 12, 1952.

Mr. Wilkey: Your Honor, we further object if it is February of 1952, the only theory or relevancy advanced by Mr. Foreman is to try to connect it up as an explanation for checks cashed in October of 1953, a year and six months later, when the witness was not working for the School District and had not been for ten months.

The Court: I will not sustain the objection so far as the defense is concerned. This is cross examination, and it is my intention to allow a thorough and complete cross examination. However, I do believe that there should be

some limit on how many times you ask a man about something he says he has no knowledge of. I will allow you to explore it reasonably and fully as to whether he does have knowledge, but if he insists he has no knowledge of it, I think we must reach a point where we must accept his testimony and by accepting it, I do not mean that the jury is required to accept it as true, but there must be a limit to how many times you ask a man about something he says he knows nothing about.

Mr. Foreman: Is the Court through?

The Court: Yes, sir.

Mr. Foreman: We offer it further to impeach this witness who testified yesterday he knew nothing about this deposit and he didn't spend the money. We are laying a predicate to show he did know about it and did spend the money.

The Court: Are you going to impeach him by his own testimony?

Mr. Foreman: By the official records of the bank.

The Court: You cannot impeach him by your questions?

Mr. Foreman: I will have to lay a predicate first.

The Court: Yes, that is true. You may cross examine.

Mr. Wilkey: By the way, Your Honor, we object to any impeaching by the records of the bank because if

there were records of the bank, I don't believe they have been proved up as such, and it would not be shown—

The Court: I don't understand that the attempt is to impeach him by records of the bank. I understand that the attempt is to impeach him by his own testimony by the employment of a thorough cross examination, which I have stated I will allow.

Mr. Foreman: May it please the Court, so far as records of the bank are concerned, I am laying a predicate as to what they show by this witness in view of what he testified to yesterday afternoon.

The Court: The bank's records are not in evidence in this respect, and this is oral examination.

Mr. Foreman: Yes, Your Honor.

Now, this is the—isn't it true that when you were notified by someone at the San Diego State Bank that this bunch of taxpayers' checks, payable to the Benavides Independent School District, that you had carried there for deposit to your account or for collection and then deposit, when you were notified they had cleared, that you went and got some cash on February 15 and ordered your note paid out of the balance?

A. No, sir. That didn't happen to my knowledge. I didn't do it. If it was done, I didn't do it.

Q. I will ask you if the same thing is not true with reference to the deposit slip here to the Diego Heras special, March 18, 1952, in the amount of currency, $1,487.11, less cash? Isn't it true that actually those checks were deposited at that bank several days in advance of

March 12—March 18, 1952, that when you were notified they had cleared and the money was ready, you went by and got $200 and deposited the other $1,487.11?

A. No, sir.

Q. And I believe you testified yesterday, sir, that you had not spent that money, not checked it out of your account?

A. No, sir, I didn't check any money out of that account.

Q. Speak a little louder.

A. I don't recall checking anything out of the special account.

Q. Are you qualifying now? You stated first, "I did not check anything out of that account," and now you say, "I don't recall having done so."

A. Mr. Foreman, I had a special account there for the years 1948 and 1949, but it was a small special account which I drew out of there, but it was not in the way of thousands of dollars.

Q. I am asking you subsequent to February 15, 1952, and down to July—the final check is July 6, 1954—if you did not continuously, in small amounts, week-by-week and month-by-month, check all of that deposit of $2,503.96 and $1,287.11 until there wasn't a dime left after July 6, 1954? Is that true or false?

A. I don't think it is true.

Q. Then I want to ask you about some specific dates and checks. The first date I want to ask you after February—is this the Diego Heras special?

A. That is what it reads on there.

Q. Does it show a deposit on February 15, 1952 of $2,503.96?

A. Yes, sir.

Q. And does it show a deposit on March 18, 1952 of $1,287.41?

A. Yes, sir.

Q. And does it show a deposit of $20 on August 2, 1952?

A. Yes, sir.

Q. And except for those deposits, those are the only deposits shown on this Diego Heras special, Box 852, Benavides, Texas, isn't that true?

A. That is what the paper reads.

Q. Didn't you, on February 27, 1952, write a check for $30, and on February 28, 1952 write a check for $300, and on February 29, 1952 write a check for $27.95, and on March 7, 1952 write a check for $200, and on March 8, 1952 you deposited $495, didn't you?

A. Well, that is what is written there. I don't remember it. I don't remember making any of those checks. I don't have the checks with me. There is not—there is a typewritten bank deposit slip and it reads, "Note $495."

Q. That same note appears on your liability ledger, doesn't it?

A. I don't know. It is the same amount. I don't know whether I executed a note or not. I don't see the note. All I can say is it reads there in that sheet $495.

Q. Did you execute a note on March 8, 1952, for $495?

A. I don't think so.

Q. I will ask you these items as one question, did you write a check for $8.10 on March 11, 1952, on March 12, 1952 a check for $14.95, and also—

Mr. Wilkey: We object to this as being duplicitous. In the last question, he read off four or five checks and wound up with a note, and there may be a considerable difference between the checks and the note and what he

is asking to do is get an answer to it all wrapped up in one, and we would like them asked specifically.

The Court: Yes, that is suggested.

Mr. Foreman: I think it is proper, but I was trying to save time.

The Court: I think you can speed it up by saying did you write a check for this amount on a certain date, and speed it up that way.

Q. (By Mr. Foreman) Did you on March 12, 1952 write a check for $14.95?

A. No, sir.

Q. On the same day for $20?

A. No, sir.

Q. On the same day for $3.45?

A. No, sir.

Q. On the same day for $16.22?

A. No, sir.

Q. On the same day for $20?

A. No, sir.

Q. On March 14, 1952, did you write a check for $5?

A. No, sir.

Q. On March 15, write one for $5?

A. No, sir.

Q. On March 15, did you write another one for $2 and another one for $7.79?

A. I don't recall having made a check on either that or the personal account. I may have made a check for $2 on my personal account, but I don't think I made it on my special account, not in that year, 1952.